Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

RALPH NADER and PETER MIGUEL CAMEJO,
Petitioners,

v.

LINDA S. SERODY, RODERICK SWEETS, RONALD BERGMAN, RICHARD TRINCLISTI, TERRY TRINCLISTI, BERNIE COHEN-SCOTT, DONALD BROAN and JULIA O'CONNELL
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Do the First and Fourteenth Amendments to the United States Constitution permit a state to penalize candidates who submit nomination papers for public office by ordering them to pay $81,102.19 in litigation costs to political opponents who successfully sue to remove them from the ballot?

PARTIES TO PROCEEDING BELOW

Petitioners Ralph Nader and Peter Miguel Camejo were the named defendants and appellants below. Respondents Linda S. Serody, Roderick Sweets, Ronald Bergman, Richard Trinclisti, Terry Trinclisti, Bernie Cohen-Scott, Donald Broan and Julia O'Connell were plaintiffs and appellees below.

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PETITION FOR A WRIT OF CERTIORARI

This case arises out of litigation the Democratic Party initiated against Petitioners Ralph Nader and Peter Miguel Camejo, who were independent candidates for President and Vice President, respectively, in the 2004 general election. The Party's goal was to deny voters the opportunity of voting for Petitioners by draining Petitioners' campaign of resources and forcing them from the race. Thus, between June and September of 2004, the Party filed twenty lawsuits to challenge Petitioners' nomination papers in seventeen states. Fifteen of those lawsuits were dismissed. The Party prevailed in Pennsylvania, however, having hired no fewer than nineteen attorneys to prosecute its claims. The trial court subsequently ordered Petitioners to pay $81,102.19 in costs to Respondents, who were the named plaintiffs in the proceedings below. The Pennsylvania Supreme Court affirmed.

This petition seeks review of the Pennsylvania Supreme Court's decision, so that this Court may determine the important constitutional questions raised by the financial penalties that Pennsylvania imposes on candidates who submit nomination papers for public office. *Because this case arises in the context of a presidential election, these questions implicate a uniquely important national interest. Moreover, these questions assume a particular urgency because the same trial court that assessed costs against Petitioners in 2004 has assessed costs against another federal candidate in 2006. The bill submitted in that case totals $89,668.16. Finally, Pennsylvania's penalties operate to freeze the political status quo, because they are aimed at minor party and independent candidates alone.* Intervention by this Court is therefore urgently needed to preserve the delicate balance of federal and state interests at stake in federal elections, and to protect the

rights of speech, assembly and to petition the government for redress of grievances in Pennsylvania and nationwide.

OPINIONS BELOW

The opinion of the Pennsylvania Supreme Court is published at 905 A.2d 450 (Pa. 2006), and is set forth in the appendix at 1a. The trial court order assessing costs against Petitioners is unpublished and is set forth in the appendix at 60a. The trial court order approving Respondents' Bill of Costs is unpublished and is set forth in the appendix at 62a.

JURISDICTION

The judgment of the Pennsylvania Supreme Court was entered on August 22, 2006. The Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourteenth Amendment to the United States Constitution states in relevant part: "No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The statutory provisions involved are Section 2937 and Section 3502.1 of the Pennsylvania Election Code, which are set forth in the appendix at 63a-64a.

STATEMENT OF CASE

A. Factual Background

Petitioners Ralph Nader and Peter Miguel Camejo were independent candidates for President and Vice President of the United States, respectively, in the 2004 general election. Respondents are eight Pennsylvania residents the Democratic Party enlisted to file a complaint challenging Petitioners' nomination papers and seeking their removal from Pennsylvania's ballot.

Democratic Party officials worried that Petitioners' candidacy would detract votes from their candidates, John Kerry and John Edwards, in the 2004 presidential election. Therefore, as part of its strategy to win that election, the Party launched a massive legal assault on Petitioners' campaign, which was intended to drain their resources and force them from the race. Between June and September of 2004, seventeen state Democratic Parties either sued or materially supported lawsuits filed against Petitioners. At least eighty-nine lawyers from forty-eight law firms nationwide helped prosecute these lawsuits. A Section 527 organization called The Ballot Project was established to coordinate their efforts. The goal, the organization's president told the *Washington Post*, was "to neutralize [Petitioners'] campaign by forcing [them] to spend money and resources defending these things."

Fifteen out of twenty lawsuits the Democratic Party initiated against Petitioners were dismissed. The Party

prevailed in Pennsylvania, however, having hired no fewer than nineteen attorneys to prosecute its claims. Now those attorneys seek to collect $81,102.19 in costs from Petitioners, including $42,835.19 for court reporter services and transcripts, and $38,267.00 for handwriting experts.

B. Procedural History

On August 9, 2004, Respondents filed a complaint alleging numerous defects in Petitioners' nomination papers and seeking Petitioners' removal from Pennsylvania's ballot. Pennsylvania law required Petitioners to submit 25,697 valid signatures with their nomination papers. Petitioners submitted 51,273 signatures in total. To determine whether Petitioners submitted enough valid signatures, Judge James Gardner Colins and ten other judges assigned to the case held evidentiary hearings throughout the state. Based on these hearings, Judge Colins found only 18,818 signatures valid. Pet. App. 38a. Thus, on October 13, 2004, the trial court set aside Petitioners' nomination papers in an opinion that strongly rebuked Petitioners. "[T]his signature-gathering process was the most deceitful and fraudulent exercise ever perpetrated upon this Court," Judge Colins wrote, noting that the papers not only included names such as "Mickey Mouse," "Fred Flintstone," "John Kerry," and "Ralph Nader," but also, "thousands of names that were created at random and then randomly assigned either existent or non-existent addresses by the circulators." *Id.* at 37a.

However, as this petition demonstrates *infra* at Point IV, the facts in Judge Colins' own opinion flatly contradict his conclusion. Furthermore, Judge Colins never found Petitioners or anyone associated with their campaign responsible for wrongdoing. To the contrary, the record is uncontroverted that Petitioners voluntarily withdrew

thousands of signatures in an effort to lessen the trial court's burden. Nevertheless, on October 19, 2004, the Pennsylvania Supreme Court affirmed without opinion, issuing a *per curiam* order. *Id.* at 39a. Only Justice Saylor, who dissented, issued a written opinion. Justice Saylor specifically noted that the record did not support Judge Colins' conclusion on the issue of fraud. *Id.* at 57a n.13. Justice Saylor also found grounds for reversal in the trial court's erroneous invalidation of 8,976 signatures from qualified but unregistered voters. *Id.* at 59a.

The only notice Petitioners received of the financial risk they assumed by submitting nomination papers in Pennsylvania came in a status conference on August 11, 2004, when Judge Colins informed counsel that he would assess costs against the losing party. At that time, two days after Respondents filed their complaint, Petitioners had no reason to believe they would not prevail, nor could they have known the penalty that awaited if they did not. Nevertheless, when Judge Colins assessed this penalty, he treated it as an ordinary case of no fault cost-shifting, issuing his order assessing costs against Petitioners without opinion on October 14, 2004. *Id.* at 60a. Respondents submitted their bill totaling $81,102.19 on December 3, 2004, and Judge Colins approved the bill, again without opinion, on January 14, 2005. *Id.* at 62a.

On appeal to the Pennsylvania Supreme Court, Petitioners argued that the penalty assessed against them burdened their rights of political association, political speech and due process, as well as the right of voters to cast their votes effectively, in violation of the First and Fourteenth Amendments to the United States Constitution. Pet. Brief 15-16. Petitioners specifically argued that the penalty threatened candidates with "personal financial ruin and bankruptcy," subject only to the trial court's discretion. *Id.* at 17. Thus,

Petitioners argued, the proceedings below violated their "fundamental due process rights." *Id.* Finally, Petitioners argued that the trial court's order was an abuse of discretion and unauthorized by Pennsylvania law. *Id.* at 14, 18.

On August 22, 2006, a divided Pennsylvania Supreme Court affirmed, holding that Section 2937 of the Pennsylvania Election Code permits the trial court to order candidates to pay costs "in its discretion," and that the trial court did not abuse its discretion in ordering Petitioners to pay Respondents $81,102.19. Pet. App. 16a-17a. Like the trial court, the majority treated the penalty assessed against Petitioners primarily as an ordinary case of no fault cost-shifting. Thus, the majority devoted its analysis to statutory construction, and did not address Justice Saylor's finding that the record did not support Judge Colins' ruling on fraud. In fact, the majority made no independent analysis of the record whatsoever, relying instead on Judge Colins' conclusion that fraud was pervasive, and that Petitioners were responsible for it. The majority summarily dismissed Petitioners' constitutional objections, finding "no evidence" that the penalty assessed against them burdened their rights of political association and political speech. *Id.* at 15a. In any case, the majority concluded, the burden would be "rationally related" to the state's interest in ensuring honest and fair elections. *Id.* The majority entirely failed to address the burden imposed on Petitioners' due process rights and the burden imposed on voters' First Amendment rights. Justice Saylor and Justice Eakin dissented, finding that Section 2937 did not authorize the court to assess costs against candidates. *Id.* at 18a, 21a. Justice Eakin concurred in part, finding authorization for $42,835.19 in costs under a previously uncited provision of the court's Internal Operating Procedures. *Id.* at 21a-22a.

On October 11, 2006, the trial court entered a *per curiam* order denying Petitioners' motion for a stay pending disposition by this Court of their petition for a writ of certiorari. On October 31, 2006, Respondents' counsel sent Petitioners' counsel a letter demanding payment by November 3, 2006 of $89,821.23, representing the penalty assessed in the decision below "plus statutory interest".

REASONS FOR GRANTING THE WRIT

I. The Decision Below Presents an Important First Amendment Question Concerning the Constitutional Legitimacy of State-Imposed Penalties on Candidates Who Submit Nomination Papers for Public Office, with Significant Impact on Future State and Federal Elections.

The question presented is whether the Constitution permits Pennsylvania to order candidates who submit nomination papers for public office to pay $81,102.19 in costs to political opponents who successfully sue to remove the candidates from the ballot. The issue raised, however, is not whether Pennsylvania has the authority to enact reasonable ballot access restrictions, but whether Pennsylvania may penalize candidates who try but fail to comply with the restrictions it enacts, absent a finding of wrongdoing by the candidates. The Court has never addressed that question directly. Review is therefore warranted because the decision below impacts a uniquely important national interest, with significant consequences for future state and federal elections.

In holding that Section 2937 of the Pennsylvania Election Code permits the state to impose a financial penalty on candidates who commit no wrong, but only try to comply with state election laws, the Pennsylvania Supreme Court

subjects future candidates in Pennsylvania to the risk of incurring severe financial penalties, limited only by a trial court's discretion, if they do not voluntarily withdraw their nomination papers when challenged. In fact, the same trial court that assessed $81,102.19 in costs against Petitioners has already relied on the decision below to assess costs against a federal candidate in the 2006 election cycle. The bill submitted in that case, which is pending approval by the trial court, totals $89,668.16. *In re: Nomination Paper of Marakay Rogers*, No. 426 M.D. 2006 (Pa. Comm. Ct. 2006). The punitive nature of these costs cannot fail to intimidate those who might otherwise run for office. This Court's intervention is therefore urgently needed to protect the rights of speech, assembly and to petition the government for redress of grievances from the chilling effect the decision below causes in Pennsylvania. *Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 757 (1988); *NAACP v. Button*, 371 U.S. 415, 433 (1963).

The impact of the decision below is not confined to Pennsylvania's electoral system alone. As the Court has noted, "in a Presidential election a State's enforcement of more stringent ballot access requirements...has an impact beyond its own borders." *Anderson v. Celebreeze*, 460 U.S. 780, 795 (1983). This is because a presidential candidate's failure to achieve ballot access in one state undermines the candidate's ability to compete in other states. Moreover, Pennsylvania, with its twenty-one Electoral College votes and battleground state status, is among the most important states in the nationwide presidential election. Candidates who fail to achieve ballot access in Pennsylvania therefore suffer a substantial setback in the nationwide election and, further, are stigmatized by their failure to compete in an important state. The penalties Pennsylvania imposes on presidential candidates thus "implicate a uniquely important national interest." *Id.* at

794-95. Certiorari is warranted so that the Court may address the impact that the decision below has on this uniquely important national interest.

Furthermore, denying review will only exacerbate the immediate harm the decision below causes by inviting uncertainty into long-standing and well-settled principles of constitutional law. *See Lubin v. Panish*, 415 U.S. 709 (1974) (striking down candidate filing fees where the state failed to provide a non-monetary alternative); *Bullock v. Carter*, 405 U.S. 134 (1972) (same). For if the Constitution permits Pennsylvania to impose financial penalties on candidates who submit nomination papers but commit no wrong, then the Constitution permits other states to do the same. Without this Court's intervention, candidates nationwide will face uncertainty as to the personal financial harm to which they subject themselves by submitting nomination papers in *any* state. Presidential candidates in particular will face millions of dollars in potential penalties in the very next election cycle. The chilling effect the decision below causes thus will be felt nationwide. Moreover, it will be felt most keenly by minor party and independent candidates, who already struggle with limited resources to comply with state laws requiring them to submit tens of thousands of signatures to achieve ballot access. As this Court has recognized, minor party and independent candidates play a vital role in our political system, having introduced innumerable political programs the major parties eventually adopted, such as the abolition of slavery, women's suffrage, the graduated income tax, social security and many others. *Sweezy v. New Hampshire*, 354 U.S. 234, 251 (1957). The absence of such candidates from the nation's political system "would be a symptom of grave illness in our society." *Id.* Yet such is the inevitable consequence of a state regulation that "operate[s] to freeze the

political status quo" by penalizing these candidates for trying to participate in elections. *Jenness v. Fortson*, 403 U.S. 431, 438 (1971). This intolerable result requires the Court's intervention.

II. The Decision Below Vests Trial Courts with Unbounded Discretion to Penalize Candidates Who Engage in Protected First Amendment Activity.

The uncertainty the decision below introduces into the federal electoral system is aggravated by the Pennsylvania Supreme Court's novel construction of Section 2937, which vests the trial court with unbounded discretion to penalize candidates who submit nomination papers. Pet. App. 63a. "The legislature has determined that the court, in its discretion when it deems it just, can impose costs," the majority held. *Id.* at 16a. So construed, the statute makes no distinction between a candidate's legitimate exercise of First Amendment freedoms and conduct that is properly subject to sanctions. *De Jonge v. State of Oregon*, 299 U.S. 353, 364-65 (1937). Indeed, as Justice Saylor noted in dissent, the record contains no finding of wrongdoing by Petitioners. Pet. App. 57a n.13. Moreover, the majority entirely failed to address the view of both dissenting Justices that Section 2937 does not authorize costs against candidates under any circumstances. *Id.* at 18a, 21a. Nevertheless, the majority's construction is authoritative, and transforms Section 2937 into "a penal statute susceptible of sweeping and improper application." *Button*, 371 U.S. at 433. The provision does not "aim specifically at evils within the allowable area of State control," but authorizes sanctions against protected and unprotected activity alike. *Thornhill v. State of Alabama*, 310 U.S. 88, 98 (1940).

Section 2937 not only chills the legitimate exercise of First Amendment freedoms with the constant and pervasive threat of sanction, but also lends itself to harsh and discriminatory enforcement. *Id.* Prior to this case, Pennsylvania had never before in any reported decision assessed costs against a candidate under Section 2937. In fact, the decision below is virtually devoid of authority to support the assessment. In the only case on which the court below relied, costs assessed against a candidate were actually *reversed*, although the court noted in dicta that it had authority to allow them. *In re Nominating Petition of Esther M. Lee*, 578 A.2d 1277, 1279 (Pa. 1990). Moreover, the assessment of $81,102.19 in costs exceeds the express statutory limit set forth in the Pennsylvania Election Code by more than 800 percent. *See* 25 P.S. 3502.1 (authorizing the court to assess costs against any candidate "who knowingly makes a false statement regarding his eligibility or qualifications...in an amount up to ten thousand ($10,000) dollars"); Pet. App. 64a. The assessment of costs in the decision below thus penalizes Petitioners without notice for engaging in conduct that ordinarily constitutes an exercise of First Amendment freedoms. *Thornhill*, 310 U.S. at 97-98.

As this Court has long recognized, fundamental principles of due process require a state to provide "fair notice" that conduct may be subject to criminal sanctions or civil penalties. *United States v. Harriss*, 347 U.S. 612, 617 (1954). In the decision below, the court justified the unprecedented penalty assessed against Petitioners by reference to the fraud it attributed to them. Pet. App. 16a. However, the court did not invoke Section 3502.1, the statute that authorizes penalties for such conduct – no doubt because the record contains no finding that Petitioners engaged in that conduct. Pet. App. 64a. Instead, the court invoked Section 2937 to authorize a penalty that grossly exceeds the express

limit set forth in Section 3502.1. *Id.* "It is the statute," however, "not the accusation under it, that prescribes the rule to govern conduct and warns against transgression." *Lanzetta v. State of New Jersey*, 306 U.S. 451, 453 (1939). By invoking Section 2937 to penalize Petitioners without any evidence of wrongdoing by them, the court violated the most basic principles of due process. *See Thompson v. Louisville*, 362 U.S. 199 (1960) (reversing conviction where record was devoid of evidence that the convicted committed a crime). The court compounded this error by its "unforeseeable judicial enlargement" of Section 2937, which, "applied retroactively, operates precisely like an ex post facto law." *Bouie v. City of Columbia*, 378 U.S. 347, 353 (1964). Just as the Constitution prohibits a state legislature from passing such a law, so too "a State Supreme Court is barred by the Due Process Clause from achieving precisely the same result by judicial construction." *Id.*, at 353-54 (reversing conviction based on a novel statutory construction retroactively applied).

Ballot access laws that impose disparate requirements on minor party and independent candidates routinely survive scrutiny by this Court. *See American Party of Texas v. White*, 415 U.S. 767 (1974); *Storer v. Brown*, 715 U.S. 724 (1974); *Jenness*, 403 U.S. 431. The decision below goes one fatal step further, however, in holding that a state may penalize minor party and independent candidates who attempt to comply with those requirements. This was constitutional error. The First Amendment rights of speech, assembly and to petition the government for redress of grievances are equally guaranteed to all, including minor parties and dissident groups. *See NAACP v. Alabama*, 357 U.S. 449, 460 (1958); *Sweezy*, 354 U.S. 234; *De Jonge*, 299 U.S. 353. Moreover, when Petitioners submitted their nomination papers, they were engaged in an effort to achieve legitimate political ends through lawful means, which is quintessentially

protected activity. *See Button*, 371 U.S. at 434. This Court has consistently held that only a regulation narrowly drawn to serve a compelling state interest can justify limiting such freedoms. *Id.* at 438. The assessment of costs in the decision below is not narrowly drawn, nor does it serve any legitimate state interest. Given the immediate and severe impact the Pennsylvania Supreme Court's error will have on the nation's electoral system, this Court cannot safely allow the error to pass. This is particularly true because the same trial court has already repeated the error by penalizing another federal candidate in 2006. *See In re: Nomination Paper of Marakay Rogers*, No. 426 M.D. 2006 (Pa. Comm. Ct. 2006). The bill submitted in that case, totaling $89,668.16, is pending approval. Intervention by this Court is therefore urgently needed to correct these egregious errors and prevent their repetitition.

III. The Decision Below Conflicts with this Court's Precedents and Is Wrong on the Merits.

Certiorari is also warranted because the decision below is wrong on the merits. It held that a trial court can impose costs on candidates whose political opponents bring proceedings to remove them from the ballot. Pet. App. 17a. That holding is contrary to this Court's precedent prohibiting states from requiring "candidates to shoulder the costs of conducting...elections." *Bullock*, 405 U.S. at 149. As this Court explained in *Bullock*, the costs of holding an election arise due to a state's legislative choice, not due to a candidate's decision to run. *Id.* at 148. Since candidates have no alternative but to comply with the state's legislative choice, the Court refused to require candidates to "pay that share of the cost that they have occasioned" by trying to comply with the state's choice. *Id.*

In *Bullock*, the Court stated that filing fees must be "closely scrutinized" and found "reasonably necessary" to accomplish "legitimate state objectives" in order to pass constitutional muster. *Id.* at 144. The Court therefore struck down the filing fees at issue because, while they furthered the legitimate objective of relieving a burden on the state's treasury, they are not "necessary" to achieve that objective. *Id.* at 145. In the decision below, by contrast, the costs that the court assessed do not relieve a burden on the state's treasury. Rather, these costs reimburse private citizens for expenditures they allegedly made in proceedings they brought to remove political opponents from the ballot. The Court has never held that states have a legitimate interest in reimbursing citizens under these circumstances. To the contrary, the Court has determined that states "may not award compensation for the consequences of nonviolent, protected activity." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 918 (1982) (denying recovery in tort for consequences of political boycott).

Even assuming that states have a legitimate interest in reimbursing private citizens under the facts of this case, the Pennsylvania Supreme Court nevertheless applied the wrong legal standard. The court upheld Section 2937 because it found the statute "rationally related" to the state's interest in ensuring honest and fair elections. Pet. App. 15a. The decision below thus squarely conflicts with the heightened standard of review this Court uniformly applies in First Amendment cases generally, and which it specifically adopted in *Bullock* and subsequently reaffirmed. *Bullock*, 405 U.S. at 144; *Lubin*, 415 U.S. at 709. Moreover, the court below completely ignored the effect of its decision on voters' rights. Yet the unequal impact on voters' rights was this Court's primary rationale for adopting heightened review in *Bullock* and *Lubin*. *Bullock*, 405 U.S. at 143-144; *Lubin*, 415 U.S.

at 713. The costs assessed below, like those in *Bullock*, are "so patently exclusionary as to violate traditional equal protection concepts." *Lubin*, 415 U.S. at 715 n.4. Thus, certiorari is also warranted so that this Court may review the effect of the decision below on voters' rights in light of *Bullock* and *Lubin*.

IV. The Pennsylvania Supreme Court Failed to Conduct the Independent Review of Facts that this Court Consistently Requires Where Necessary to Determine a Constitutional Question.

This Court's consistent practice of requiring an independent evaluation of facts necessary to determine a constitutional question compels the granting of this petition. *See Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 498-501 (1984); *NAACP v. Claiborne*, 458 U.S. 886, 921-32 (1982); *New York Times v. Sullivan*, 376 U.S. 254, 285 (1964); *Napue v. Illinois*, 360 U.S. 264, 272 (1959); *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110, 122 (1954); *Niemotko v. Maryland*, 340 U.S. 268, 271 (1951); *Feiner v. New York*, 340 U.S. 315, 316 (1951); *Watts v. Indiana*, 338 U.S. 49, 50-51 (1949); *Hooven & Allison Co. v. Evatt*, 324 U.S. 652, 659 (1945); *Norris v. Alabama*, 294 U.S. 587, 589-90 (1935); *Ohio Valley Water Co. v. Borough of Ben Avon*, 253 U.S. 287, 289 (1920). Indeed, this case provides striking confirmation of the wisdom of the Court's long-standing practice. For the decision below, which raises constitutional questions of the utmost importance, relies on a factual conclusion that the Pennsylvania Supreme Court failed to evaluate, and which, as the dissent demonstrates, the record flatly contradicts.

As an initial matter, the idea that Petitioners attempted to gain ballot access as candidates for the highest office in the

nation by submitting thousands of obviously fictitious or fraudulent names like Mickey Mouse, Fred Flintstone, Ralph Nader and John Kerry, strains credulity. As Petitioners have maintained, they, like the court, were victims of a well-organized and well-publicized effort to sabotage their campaign. Pet. Brief 10-11. Moreover, despite Judge Colins' serious accusations, he made no finding that Petitioners or anyone in their campaign were responsible for wrongdoing, nor did he provide any basis whatsoever for penalizing them. Pet. App. 62a. Nevertheless, in affirming that penalty, the Pennsylvania Supreme Court explicitly relied on Judge Colins' finding of fraud. *Id.* at 16a-17a. The court did so even though, as Justice Saylor noted in dissent, the facts in Judge Colins' own opinion conclusively refute that finding. *Id.* at 57a n.13.

Specifically, the trial court found only 687 of 51,273 total signatures (or 1.3 percent) to be "forgeries". *Id.* Judge Colins counted 568 of these himself, while the other ten judges combined counted fewer than 100. *Id.* at 34a, 36a. Thus, Judge Colins counted forgeries at a rate (5.25 percent) more than 20 times that of the other ten judges (0.25 percent) and accounted for 85 percent of the total. Moreover, the eleven trial court judges invalidated the vast majority of signatures not based on fraud, but on technical grounds. *Id.* at 35a-36a. For example, almost 9,000 signatures were invalidated because otherwise qualified electors were not registered on the day they signed the petition. *Id.* at 35a. Almost 8,000 signatures were invalidated because information like dates and addresses were "written in [the] hand of another." *Id.* at 36a. More than 6,000 signatures were invalidated because the signor's current address did not match that on the voter registration list. *Id.* at 35a-36a. Finally, almost 2,000 signatures were invalidated due to missing information. *Id.* at 36a. Despite invalidating more than

25,000 signatures on narrow technical grounds, the trial court still found almost 19,000 signatures valid. *Id.* Thus, the undisputed record flatly contradicts Judge Colins' finding of widespread fraud. Moreover, as Justice Saylor noted, to the limited extent that the record reflects fraud, Judge Colins did not find that Petitioners – rather than their opponents – were responsible. *Id.* at 57a n.13. To the contrary, the record is uncontroverted that Petitioners voluntarily withdrew thousands of signatures in an effort to mitigate the consequences of their opponents' sabotage.

The disparate treatment of Petitioners' constitutional claims by the majority and the dissent in the decision below arises directly from their disagreement as to whether the court was required to make an independent evaluation of the facts. The majority accepted the trial court's finding of fraud without examination, and therefore rejected Petitioners' constitutional claims. The dissent rejected the trial court's finding of fraud, and therefore found it unnecessary to reach Petitioners' constitutional claims, concluding that the penalty assessed against them was unauthorized. Pursuant to the principle stated in the cases above, Petitioners respectfully request this Court to grant certiorari, so that the Court may determine for itself what the facts in the record disclose, and whether Section 2937 unconstitutionally burdens their rights of speech, assembly, to petition the government for redress of grievances, and to due process of law. Moreover, granting certiorari will enable the Court to address the impact of Section 2937 on voters' rights, which the decision below entirely ignores.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

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APPENDIX A

SUPREME COURT OF PENNSYLVANIA

No. 198 MAP 2004, No. 17 MAP 2005

[Filed August 22, 2006]

IN RE: NOMINATION PAPER OF RALPH NADER AND PETER MIGUEL CAMEJO AS CANDIDATES OF AN INDEPENDENT POLITICAL BODY FOR PRESIDENT AND VICE PRESIDENT IN THE GENERAL ELECTION OF NOVEMBER 2, 2004	)
LINDA S. SERODY, RODERICK J. SWEETS, RONALD BERGMAN, RICHARD TRINCLISTI, TERRY TRINCLISTI, BERNIE COHEN-SCOTT, DONALD G. BROWN AND JULIA A. O'CONNELL	)
APPEAL OF: RALPH NADER AND PETER MIGUEL CAMEJO, AND THEIR INDEPENDENT ELECTORS	)

Appeal from the Order of the Commonwealth Court entered October 14, 2004 at No. 568 MD 2004. Appeal from the Order of the Commonwealth Court entered January 14, 2005 at No. 568 MD 2004. Trial Court Judges: James Gardner Colins, Commonwealth Court President Judge

OPINION

MADAME JUSTICE NEWMAN

Appellants Ralph Nader (Nader) and Peter Miguel Camejo (Camejo) appeal two Orders of the Commonwealth Court assessing costs against them individually and against their unsuccessful campaign for the respective offices of President and Vice-President of the United States. For the reasons that follow, we affirm the Orders of the Commonwealth Court that required Appellants to pay transcription and stenography costs in the amount of $82,102.19 to Appellees.

FACTS AND PROCEDURAL HISTORY

Appellees are registered voters in Pennsylvania who waged a successful battle to set aside Nomination Papers that Appellants filed to secure positions as candidates on the Pennsylvania ballot for the November 2, 2004 General Election. The Commonwealth Court granted the relief that Appellees sought and found that wide-ranging fraud and deception had occurred during the signature-gathering process of Appellants. The stenographic and transcription costs that are the subject of this Opinion were incurred during hearings held regarding Appellees' challenge.

A review of the extensive litigation history regarding the campaign of Appellants is essential to understanding the issue presented today. The genesis of the controversy dates back to August 2, 2004, when Appellants filed Nomination Papers to appear as candidates on the Pennsylvania ballot for the November 2, 2004 General Election. On August 9, 2004, Appellees Linda S. Serody, *et al.*, filed a Petition alleging that the Nomination Papers contained insufficient valid,

genuine, authentic, and complete signatures to qualify Nader and Camejo to appear on the ballot.

Appellants filed Initial Objections to the Petition on August 17, 2004, and on August 19, 2004, the Commonwealth Court ordered the parties to present all pre-trial evidentiary objections, including questions with regard to the manner in which the Commonwealth Court would review the challenged signatures. Appellants filed an Application to Dismiss the Petition, along with additional Objections on August 23, 2004 and August 24, 2004.

On August 30, 2004, the Commonwealth Court set aside the Nomination Papers and disqualified Nader and Camejo from the ballot because they had accepted the nomination of the Reform Party in Michigan, thus violating Section 951(e) of the Election Code.[1] The Commonwealth Court further

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[1] Section 951(e) of the Election Code provides that:

> There shall be appended to each Nomination Paper offered for filing an affidavit of each candidate nominated therein, stating--(1) the election district in which he resides; (2) the name of the office for which he consents to be a candidate; (3) that he is eligible for such office; (4) that he will not knowingly violate any provision of this act, or of any law regulating and limiting election expenses, and prohibiting corrupt practices in connection therewith; (5) that his name has not been presented as a candidate by nomination petitions for any public office to be voted for at the ensuing primary election, nor has he been nominated by any other Nomination Papers filed for any such office; (6) that in the case where he is a candidate for election at a general or municipal election, he was not a registered and enrolled member of a party thirty (30) days before the primary held prior to the general or municipal election in that same year;

disqualified Camejo for the reason that his candidate's affidavit falsely indicated that he was not enrolled in a political party, despite the fact that he was a member of the California Green Party. The Order also addressed Appellants' procedural objections. *In re Nomination Paper of Ralph Nader*, 856 A.2d 908 (Pa. Cmwlth. 2004) (*rev'd*, *In re Nomination Paper of Ralph Nader*, 579 Pa. 561, 858 A.2d 58 (Pa. 2004)).

Appellants appealed that Order to our Court, and on September 20, 2004, we reversed and vacated the Order and remanded the case for expedited evidentiary hearings. *In re Nomination Paper of Ralph Nader*, 579 Pa. 561, 858 A.2d 58 (Pa. 2004). In a subsequently issued Opinion, we addressed Appellants' procedural challenges. *In re Nomination Paper of Ralph Nader*, 580 Pa. 22, 858 A.2d 1167 (Pa. 2004).

On remand, the Commonwealth Court dedicated monumental effort and resources to implement the standards for signature review that we addressed. The court provided detailed and comprehensive hearing procedures and schedules to promote fairness and efficiency with respect to the challenged signatures. The Commonwealth Court held weeks of hearings across the Commonwealth, with twelve judges

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(7) that, in the case where he is a candidate for election at a special election, he is not a registered and enrolled member of a party.

25 P.S. § 2911(e), declared unconstitutional as applied by *In re Nomination Paper of Ralph Nader*, 580 Pa. 22, 858 A.2d 1167 (Pa. 2004).

conducting a line-by-line review of the challenged signatures in sixty-three counties.[2]

In addition to regular business hours, the court sat on evenings and weekends. The Commonwealth Court issued continuances regarding its regular hearing schedule to enable the judges to conduct these hearings.

After the hearings commenced, Appellants filed an Application to Amend the Order, arguing that the signatures of individuals who are not registered voters should be counted in evaluating the sufficiency of the Nomination Papers. On September 27, 2004, the Commonwealth Court denied this Application.

On September 27, 2004, Appellants filed an Application for Extraordinary Relief, asking this Court to exercise King's Bench jurisdiction. We denied that request, with Mr. Justice Saylor filing a concurring and dissenting opinion.

The previously mentioned statewide hearings in Commonwealth Court that began on September 27, 2004, continued until October 12, 2004. On October 13, 2004, the Commonwealth Court, following three weeks of hearings throughout the state, issued its Findings, Opinion, and Order setting aside the Nomination Papers. The court ordered the Secretary of the Commonwealth not to certify Appellants' names as candidates in the November 2, 2004 General Election.

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[2] President Judge Colins, Judges Smith-Ribner, McGinley, Pellegrini, Friedman, Leadbetter, Cohn Jubelirer, Simpson, and Senior Judges Mirarchi, Kelley, Jiuliante, and Flaherty presided over the signature review process. There were four counties in which no challenges to the Nomination Papers were filed.

The Order of the Commonwealth Court concluded that the Nomination Papers did not contain the required 25,697 valid signatures and found that the Nomination Papers contained only 18,818 valid signatures. Nearly two-thirds of the signatures that had been submitted in support of the Appellants were struck. The court concluded that:

> **[T]his signature gathering process was the most deceitful and fraudulent exercise ever perpetrated upon this Court. The conduct of the [Appellants] through their representatives (not their attorneys) shocks the conscience of the Court.** In reviewing signatures, it became apparent, that in addition to signing names such as "Mickey Mouse," "Fred Flintstone," "John Kerry," and the ubiquitous "Ralph Nader," **there were thousands of names that were created at random and then randomly assigned either existent or non-existent addresses by the circulators**.

Commonwealth Court, October 13, 2004, Consolidated Findings, Opinion, and Order at 14 (emphasis added).

The Commonwealth Court issued the first Order that is the subject of this appeal on October 14, 2004. The Order stated:

> [E]xcept as otherwise ordered, all costs for court stenographer appearances and transcript preparation are hereby assessed against the Nader/Camejo campaign, Ralph Nader and Peter Miguel Camejo individually. The Chief Clerk is directed to forward any future invoices filed with the court by any court stenographer involved in the hearings . . . to the Nader/Camejo campaign and Ralph Nader and Peter

Miguel Camejo for payment.

Commonwealth Court Order, 568 M.D. 2004, October 14, 2004.

On that same day, Appellants appealed to our Court from the Order of October 13, 2004, setting aside the Nomination Papers. Appellants also filed an Application for Supersedeas asking this Court to stay the Commonwealth Court Order.

On October 19, 2004, we issued a *per curiam* Order affirming the October 13, 2004 Order of the Commonwealth Court. Mr. Justice Saylor filed a dissenting statement on October 22, 2004. We also denied the Application for Supersedeas.

The Commonwealth Court issued its second Order relevant to this appeal on January 14, 2005. That Order stated that "the Court having given consideration to [Appellees'] Bill of Costs and the response filed in opposition thereto, said Bill of Costs is approved and [Appellants] are directed to pay $81,102.19 to [Appellees]." Commonwealth Court Order, 568 M.D. 2004, January 14, 2005.

A Bill of Costs submitted to the Commonwealth Court identified $42,835.19 of the total amount as costs of court reporter appearances, transcription of proceedings, and transcripts. Appellees' Reproduced Record, 17 MAP 2005, Petitioners' Bill of Costs, II. "Itemized Listing of Costs." The costs imposed for handwriting expert witnesses totaled $38,267.00. *Id.*

Appellants appealed these two Orders separately, with each case assigned its own docket number. On October 13, 2005, this Court granted oral argument and consolidated the separate matters. The Court issued a briefing schedule and directed the parties to file supplemental briefs on three issues: (1) whether the Order of the Commonwealth Court dated October 14, 2004, was an appealable Order; (2) whether the Commonwealth Court had jurisdiction to enter the Order dated January 14, 2005; and (3) whether Appellants preserved the question of the Commonwealth Court's authority to assess costs against them under 25 P.S. § 2937.[3]

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[3] Section 2937 **(Objections to nomination petitions and papers)** provides:

> **All nomination petitions and papers** received and filed within the periods limited by this act shall be deemed to be valid, unless, within seven days after the last day for filing said nomination petition or paper, a petition is presented to the court specifically setting forth the objections thereto, and praying that the said petition or paper be set aside. A copy of said petition shall, within said period, be served on the officer or board with whom said nomination petition or paper was filed. Upon the presentation of such a petition, the court shall make an order fixing a time for hearing which shall not be later than ten days after the last day for filing said nomination petition or paper, and specifying the time and manner of notice that shall be given to the candidate or candidates named in the nomination petition or paper sought to be set aside. On the day fixed for said hearing, the court shall proceed without delay to hear said objections, and shall give such hearing precedence over other business before it, and shall finally determine said matter not later than fifteen (15) days after the last day for filing said nomination petitions or papers. If the court shall find that said nomination petition or paper is defective

The parties presented oral argument on these issues on March 1, 2006.

DISCUSSION

"[A]ppellate review of an order of a tribunal awarding counsel fees to a litigant is limited solely to determining whether the tribunal palpably abused its discretion in making the fee award." *Lucchino v. Commonwealth*, 570 Pa. 277, 809 A.2d 264, 268-69 (Pa. 2002) (citing *Thunberg v. Strause*, 545 Pa. 607, 682 A.2d 295, 299 (Pa. 1996)).[4]

The costs assessed to Appellants were incurred during hearings held with respect to the challenge of Appellees to their Nomination Papers. In proceedings involving challenges

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> under the provisions of section 976, or does not contain a sufficient number of genuine signatures of electors entitled to sign the same under the provisions of this act, or was not filed by persons entitled to file the same, it shall be set aside. If the objections relate to material errors or defects apparent on the face of the nomination petition or paper, **the court, after hearing, may, in its discretion, permit amendments within such time and upon such terms as to payment of costs, as the said court may specify. In case any such petition is dismissed, the court shall make such order as to the payment of the costs of the proceedings, including witness fees, as it shall deem just.**

25 P.S. § 2937 (emphasis added).

[4] In the matter *sub judice*, the Commonwealth Court Orders imposed only the actual costs of the litigation, which included the stenographic and transcription costs related to the hearings. The Orders did not encompass the legal fees that Appellees incurred in bringing their challenge.

to a nomination paper, the appellate court will reverse a trial court order only when the findings of fact are not supported by substantial evidence, there was an abuse of discretion, or errors of law were committed. *In re: Nomination of Flaherty*, 564 Pa. 671, 770 A.2d 327, 331 (Pa. 2001).

The underlying issue for our examination is whether the Commonwealth Court was authorized to impose costs on Appellants, where Appellees were victorious in setting aside the Nomination Papers of those candidates. For the reasons that follow, we affirm the Orders of the Commonwealth Court, based on statutory authority set forth at 25 P.S. § 2937 and the dictates of our prior case law.

The first question we set forth in our briefing Order was whether the October 14, 2004 Order was appealable. The briefing by the parties on this issue was cursory, with Appellants and Appellees agreeing that the Order should be considered appealable. However, this Court "'has only that jurisdiction as is provided by law[,]l'" and the appealability of an order raises an issue of the jurisdiction of the Court. *Commonwealth v. Saunders*, 483 Pa. 29, 394 A.2d 522, 524 (Pa. 1978) (quoting, PA. CONSTIT. art. V § 2(c)). The fact that Appellees in the instant matter agreed that the Order was appealable cannot confer jurisdiction on the Court if it is otherwise lacking.

Section 723 of the Judicial Code provides this Court with jurisdiction and states that as a general rule, "[t]he Supreme Court shall have exclusive jurisdiction of appeals from **final orders** of the Commonwealth Court entered in any matter which was originally commenced in the Commonwealth Court except an order entered in a matter which constitutes an appeal to the Commonwealth Court from another court, a magisterial district judge or another governmental unit." 42

Pa.C.S. § 723(a) (emphasis added). Accordingly, for the October 14, 2004 Order to be appealable, it must constitute a "final order" of the Commonwealth Court.

Pursuant to Pa.R.A.P. 341(b)(1), a final order is "any order: that (1) disposes of all claims and all parties. . . ." The October 14, 2004 Order did not dispose of the entire case of Appellants; therefore, it was not a final order. However, the subsequent Order of January 14, 2005, which established the amount that the Appellants were required to pay, ended the litigation and is a final order from which an appeal was permitted.

Accordingly, with respect to the first issue, we hold that the October 14, 2004 Order was not a final Order and, as a result, we quash the appeal taken from that Order. Further, as to the contention of Appellees that Appellants waived the statutory argument concerning Section 2937 because they did not raise it in their appeal of the first Order, Appellants did advance that argument with respect to their appeal of the January 14, 2005 Order, and we find that the issue was not waived.

Despite the explicit findings of the Commonwealth Court regarding the massive deception and fraud involved in Appellants' signature campaign to qualify as candidates on the Pennsylvania ballot in the 2004 General Election, Appellants adhere to their position of victimization and blamelessness. "[T]he candidates [sic] nominating papers were not set aside based on any wrongdoing by the campaign or the candidates, but rather on a serious and legitimate question of statutory construction . . . ." Brief of Appellants at 10.

Soldiering on with this same perspective, Appellants advise us that "[n]ow, their resources exhausted, [they] are

assessed costs for defending their right to seek political office and, in so doing, have brought before this Court a case of first impression on a most substantive question of Pennsylvania Election Code interpretation that will inform all future elections in the Commonwealth." *Id.* at 10-11.

Appellants are incorrect on all points: (1) the Commonwealth Court did not assess costs in order to penalize Appellants' exercise of political speech; (2) the Election Code authorizes the assessment of costs; and (3) this Court has validated the imposition of costs where a nomination petition has been set aside in *In re Nominating Petition of Esther M. Lee*, 525 Pa. 155, 578 A.2d 1277, 1279 n.3 (Pa. 1990).[5]

Pursuant to setting aside nomination petitions or papers, Section 2937 provides:

> If the court shall find that said nomination petition or paper is defective under the provisions of section 976, or does not contain a sufficient number of genuine signatures of electors entitled to sign the same under the provisions of this act, or was not filed by persons entitled to file the same, it shall be set aside. If the objections relate to material errors or defects apparent on the face of the nomination petition or paper, **the court, after hearing, may, in its discretion, permit amendments within such time and upon such terms as to payment of costs, as the said court may specify. In case any such petition is dismissed, the**

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[5] In *Lee*, we reversed the Order of the Commonwealth Court that set aside the nomination petition of the candidate because the objector had failed to serve the Secretary of the Commonwealth with the petition to set aside. However, we noted that a court can impose costs, *inter alia*, when a nominating petition is set aside.

> **court shall make such order as to the payment of the costs of the proceedings, including witness fees, as it shall deem just.**

25 P.S. § 2937 (emphasis added).

Thus, pursuant to Section 2937, the court, in situations it deems just, has the discretion to impose costs. Appellants' interpretation of this section is at best confusing and not well articulated.

First, Appellants claim that Section 2937 "does *not* authorize an award of costs against a candidate whose nomination *papers* are set aside." Supplemental Brief of Appellants at 4. Appellants argue that "[n]o where in § 2937 did the legislature confer subject matter jurisdiction on the court to order the payment of costs in any case where nomination papers are dismissed." *Id.* However, they provide no support for their position that the authority of a court to impose costs varies depending on whether it is adjudicating a challenge to a nomination petition as opposed to a nomination paper.

Appellants misconstrue that portion of Section 2937, which provides that "[i]n case any such **petition** is dismissed," costs can be awarded. Contrary to their assertion that the use of the word "petition" creates a distinction between nominating petitions and nomination papers, this Court, in discussing the meaning of "petition" at that Section, has determined that this phrase "discusses *both* nomination petitions and petitions to set aside a nomination petition. Thus, the court can impose costs, as justice requires, when either the nominating petition is set aside or the petition to set aside the nomination petition is dismissed." *In re Nominating Petition of Esther M. Lee*, 578 A.2d at 1279 n.3. We did not

make the distinction between "nomination papers" and "nomination petitions" that Appellants proffer. Instead, we affirmed the authority of the court "to impose costs, as justice requires" when a nominating petition is set aside. *Id.* In the instant case, the Commonwealth Court set aside Appellants' Nomination Papers based on "the most deceitful and fraudulent exercise ever perpetrated upon this Court." Commonwealth Court, October 13, 2004, Consolidated Findings, Opinion, and Order at 14.

In another misguided effort, Appellants argue that Section 2937 does not confer "subject matter jurisdiction on the court" to impose costs where nomination papers are dismissed, and that a court can do so only when a nomination petition is dismissed. This contention that the Commonwealth Court lacked "subject matter jurisdiction" to award costs is erroneous. Clearly, the Commonwealth Court possesses authority pursuant to the Election Code to adjudicate disputes concerning elections. Pursuant to 42 Pa.C.S. § 764 (Election contests and other matters), the Commonwealth Court has original exclusive jurisdiction of matters relating to statewide office, including the instant dispute challenging the qualification of Appellants to appear on the Pennsylvania ballot as candidates for the offices of President and Vice-President of the United States. The issue of imposition of costs is clearly related to the Commonwealth Court's adjudication of the challenged Nomination Papers of Appellants.

Finally, in their scattershot approach, Appellants allege that the Orders imposing costs are "manifestly unfair and constitute[] an unconstitutional penalty against the exercise of political speech." Brief of Appellants at 11. Appellants demonstrate their continuing state of denial regarding the findings of the Commonwealth Court that "[t]he conduct of

the Candidates, through their representatives (not their attorneys) shocks the conscience of the Court." Commonwealth Court Opinion, Consolidated Findings, Opinions and Order at 13-14.

Not every statute that impinges on a political candidate in some fashion, no matter how farfetched, is unconstitutional. The United States Supreme Court has held that "[a]lthough these rights of voters [the right to vote and to political association] are fundamental, not all restrictions imposed by the States on candidates' eligibility for the ballot impose constitutionally-suspect burdens on voters' rights to associate or to choose among candidates." *Anderson v. Celebrezze*, 460 U.S. 780, 788, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983). Further, "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Id.* (citation omitted).

Appellants' constitutional challenge cannot succeed because the cost provision in Section 2937 does not impinge upon any constitutional rights in a way that would warrant constitutional scrutiny. Appellants have provided no evidence to show how the assessment of costs, following a finding by the Commonwealth Court that nearly two-thirds of the signatures on the nomination papers were invalid, penalized their exercise of free speech.

Even if the statute did burden ballot access, which it did not, the burden would be reasonable and rationally related to the interest of the Commonwealth in ensuring honest and fair elections. Unlike the provision declared unconstitutional in *Anderson*, where an Ohio statute imposed a disparate early filing requirement on an independent candidate for the office of President, Section 2937 allows the court to impose costs

where the court deems it just. This is consistent with the interest of the Commonwealth in ensuring fair elections that are free from the taint of fraud. "[T]he right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system." *Burdick v. Takushi*, 504 U.S. 428, 441, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992). "[L]imiting the choice of candidates to those who have complied with state election law requirements is the prototypical example of a regulation that, while it affects the right to vote, is eminently reasonable." *Id.* at 440 n.10.

Given the magnitude of the fraud and deception implicated in Appellants' signature-gathering efforts, their claim that the Commonwealth Court acted in an unjust and unconstitutional fashion by assessing transcription and stenography costs does not pass the straight-face test. The legislature has determined that the court, in its discretion when it deems it just, can impose costs. Absent a palpable abuse of discretion, "it is not for the courts to undermine that determination by making a case by case assessment of" what the court found to be just with respect to the campaign that Appellants waged. *In re Nominating Petition of Esther M. Lee*, 578 A.2d at 1279.[6]

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[6] In *Lee*, the provision of Section 2937 that we reviewed regarded the requirement to file a petition objecting to nomination papers or petitions with the Secretary of the Commonwealth. However, the principle of respecting the determination of the legislature is analogous to the one we determine *sub judice*.

CONCLUSION

The Commonwealth Court acted pursuant to statutory authority in assessing costs to Appellants, where their signature-gathering campaign involved fraud and deception of massive proportions. Appellants have raised no cognizable constitutional claim to invalidate the issuance of the Orders that imposed the costs of the hearings on Appellants. Precedent of this Court has established that the court is authorized to impose costs when a nominating petition is set aside or a petition to set aside a nominating petition is dismissed. *See In re Nominating Petition of Esther M. Lee*, 525 Pa. 155, 578 A.2d 1277, 1279 n. 3 (Pa. 1990). Appellants have failed to demonstrate that the Commonwealth Court's findings of fact were not supported by substantial evidence, that there was an abuse of discretion, or that errors of law were committed.

Accordingly, we quash the appeal taken from the Order of October 14, 2004, and affirm the January 14, 2005 Order of the Commonwealth Court.

Mr. Chief Justice Cappy and Messrs. Justice Castille and Baer and Madame Justice Baldwin join the opinion.

Mr. Justice Eakin files a concurring and dissenting opinion.

Mr. Justice Saylor files a dissenting opinion.

DISSENTING OPINION

MR. JUSTICE SAYLOR

I respectfully dissent, as I believe that Section 977 of the Election Code, by its terms, authorizes an assessment of costs against objectors upon the dismissal of petitions challenging nomination petitions and papers, but not against candidates upon the setting aside of nomination petitions and papers.

As the majority notes Section 977 provides, in relevant part, as follows:

> **Objections to nomination petitions and papers:**
>
> All nomination petitions and papers received and filed within the periods limited by this act shall be deemed to be valid, unless, within seven days after the last day for filing said nomination petition or paper, a petition is presented to the court specifically setting forth the objection thereto, and praying that the said petition or paper be set aside. A copy of said petition shall, within the said period, be served on the officer of board with whom said nomination petition or paper was filed. Upon the presentation of such a petition, the court shall make an order fixing a time for hearing . . . If the court shall find that said nomination petition or paper is defective . . . it shall be set aside. . . . In case any such petition is dismissed, the court shall make such order as to the payment of the costs of the proceedings, including witness fees, as it shall deem just. . . .

25 P.S. § 2937 (emphasis added). It seems apparent, at least to me, that each of the three highlighted references to "said

petition," "such a petition," and "any such petition" is an abbreviated reference back to the petition to set aside nomination petitions and papers that is delineated at the outset of the statutory provision.

The majority's holding, however, is apparently that the last of these encompasses not only objection petitions, but additionally serves as a generic reference also subsuming both nomination petitions and papers filed by candidates. *See* Majority Opinion, *slip op.* at 11-12. I find such reading to be implausible for several reasons.

First, the two prior references back in the statute clearly could not serve such an enlarged function, since their context (discussing the service of objections and the requirement of a hearing triggered by the filing of objections) makes plain that they refer exclusively to objectors' petitions to set aside. I therefore have difficulty with the conclusion that a third and parallel reference was intended by the Legislature to serve a much more expansive purpose. Second, nowhere else in the statute (and, at least to my knowledge, in the Election Code) did the General Assembly use the word "petition" to generically include both nomination petitions and papers, let alone nomination petitions, nomination papers, and objections to nomination petitions and papers. Indeed, the General Assembly was otherwise very careful in Section 977 to specify both nomination "petitions and papers" in every proviso in which the candidates' filings are addressed. Further, a broad, generic use of the word "petition" to address three discrete forms of documents under the Election Code spanning both candidate and objector submissions is not only uncharacteristic, but also seems to me to be unnatural. Moreover, the more natural construction of the statute is consistent with the precept that the Election Code should be construed liberally, in favor of candidates' ballot access. *See*

In re Nomination Petition of Driscoll, 577 Pa. 501, 507, 847 A.2d 44, 48 (2004). Fourth, in delineating the consequences of the filing of defective nomination petitions and papers, Section 977 indicates that these documents should be "set aside" upon appropriate and meritorious challenge, 25 P.S. § 2937, whereas the assessment of costs is authorized by the statute only when a petition is "dismissed." *Id.* The phraseology of "setting aside" attaching to the treatment of nomination petitions and papers comports with their filing with the Secretary of the Commonwealth or county boards of elections as opposed to in courts of law, *see* 25 P.S. §§ 2873, 2913, whereas, the use of the term "dismissal" in the cost-assessment provision more properly aligns with the disposition of documents submitted to the courts, here, objection petitions.

Finally, I do not find the Court's brief, footnoted expression to the contrary in *In re Nominating Petition of Lee*, 525 Pa. 155, 578 A.2d 1277 (1990), to be controlling. *See id.* at 160 n.3, 578 A.2d at 1279 n.3 (indicating that "the court can impose costs, as justice requires, when either the nominating petition is set aside or the petition to set aside the nominating petition is dismissed"). Significantly, such statement is manifestly *dictum*, since the Court had otherwise found no basis to support an award of costs against the candidate, who was successful in having his nomination petition reinstated. *See id.* at 160, 578 A.2d at 1279. Therefore, the statement is not binding in this case, *see Commonwealth v. Singley*, 582 Pa. 5, 15, 868 A.2d 403, 409 (2005) (expressing the axiom that "a statement in [a] prior opinion, which clearly was not decisional but merely dicta, 'is not binding upon us'" (citation omitted)), in which the majority finds the relevant issue to be adequately preserved and squarely before the Court.

In summary, I believe that cost award against Appellants lacks a statutory basis, and therefore, I would reverse the orders of the Commonwealth Court.

CONCURRING AND DISSENTING OPINION

MR. JUSTICE EAKIN

I agree with Mr. Justice Saylor's analysis of 25 P.S. § 2937; however, I write separately to note certain costs the Commonwealth Court ordered appellants to pay may have been awarded under separate authority.

The Commonwealth Court's October 14, 2004 order required appellants to pay transcription and stenography costs, but did not cite any authority for that charge. The court did not write an opinion explaining its rationale. The Commonwealth Court's January 14, 2005 order directed appellants to pay $81,102.19 in total costs and likewise omitted any citation to authority or opinion explaining its rationale. As the majority notes, a bill of costs submitted to the Commonwealth Court identified $42,835.19 of the total amount as costs of court reporter appearances, transcription of proceedings, and transcripts. Majority Slip Op., at 7 (citing Appellees' Reproduced Record, 17 MAP 2005, Petitioners' Bill of Costs, II. "Itemized Listing of Costs."). The costs imposed for handwriting expert witnesses totaled $38,267.00. *Id.*

While § 2937 cannot provide the basis for the January 14, 2005 order, the court could have levied the $42,835.19 in

costs under § 322 of its Internal Operating Procedures.[1] However, there is no alternate provision authorizing the imposition of expert witness fees in this instance;[2] thus, the Commonwealth Court lacked authority to charge appellants for the $38,267.00 in expert witness costs. Accordingly, I would affirm the January 14, 2005 order to the extent it awarded $42,835.19 in costs, and I would reverse it to the extent it awarded an additional $38,267.00 in costs.

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[1] Section 322 provides in relevant part, "In any proceeding where a stenographer is present, the presiding judge or duty judge shall, incident to the disposition of the proceeding, provide by order for the allocation of the costs for the stenographer. Such costs normally include the appearance fee and the cost for the transcription of the notes of testimony ...." 42 Pa.C.S. § 322.

[2] The rules of civil procedure are not applicable to a challenge to a nomination petition or paper. *In re Nomination Petition of Johnson*, 509 Pa. 347, 502 A.2d 142, 145 (Pa. 1985).

APPENDIX B

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 568 M.D. 2004

[Filed October 13, 2004]

In Re: Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004	)
Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti, Terry Trinclisti, Bernie Cohen-Scott, Donald G. Brown and Julia A. O'Connell, Petitioners	)

CONSOLIDATED FINDINGS, OPINION AND ORDER

On September 20, 2004, the Supreme Court of Pennsylvania remanded this matter to this Court with directions to review every signature contained in the nomination papers of Ralph Nader and Peter Camejo (Candidates) to determine whether the Candidates had gathered a sufficient number of valid signatures to be listed on the Commonwealth's general election ballot. With the general

election scheduled for November 2, 2004, and the 67 counties of this state waiting patiently to print their ballots, this Court, immediately upon receipt of the Supreme Court's directive, dispatched 11 of its 13 judges[1] to various counties to review the challenges to the signatures submitted by the Candidates.

President Judge Colins, Judge Smith-Ribner, and Senior Judge Mirarchi[2] presided over the Philadelphia signature review, reviewing the signatures' contained in Volumes A, B, C, D, E, and F of the Objections to the Candidates Nomination Papers. Judge McGinley and Judge Pellegrini presided in Allegheny County and reviewed the challenges involving Allegheny County. Senior Judge Kelley reviewed the challenges for the nomination papers circulated in the counties of Armstrong, Beaver, Blair, Butler, Cambria, Centre, Clearfield, Fayette, Fulton, Indiana, Jefferson, Somerset, Washington, and Westmoreland, and later assisted in the Philadelphia review. Senior Judge Jiuliante presided over the review of signatures for the nomination papers circulated in the counties of Clarion, Crawford, Elk, Erie, Lawrence, Mercer, Venango, and Warren; while Judge Friedman presided over the review of nomination papers circulated in Bucks County, and Judge Leadbetter presided

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[1] Senior Judge McCloskey did not participate in this matter, since he was presiding over an election challenge involving a Congressional race. Judge Leavitt recused, and did not participate in the challenge to the Nader nomination papers.

[2] Senior Judge Mirarchi reviewed signatures that were designated as duplicates. As a result, Judge Leadbetter and Senior Judge Kelley were later assigned portions of the Philadelphia objections. Judge Leadbetter reviewed Volume E. Senior Judge Kelley reviewed Volume F. Senior Judge Mirarchi reviewed pp. 231-257 of Volume B.

over the nomination papers circulated in Montgomery County, later completing the review of Volume F of the Philadelphia challenges. Judge Cohn Jubelirer presided over the review of nomination papers circulated in Adams, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, and Schuylkill Counties. Judge Simpson presided over the nomination papers circulated in Berks, Bradford, Columbia, Cumberland, Dauphin, and Lackawanna Counties, as well as those circulated in Montour, Northampton, Perry, Susquehanna, Wyoming, and York Counties. Senior Judge Flaherty presided over the signature review for those nomination papers circulated in Delaware and Chester Counties. There were four counties to which no challenges to the nomination papers were filed. Those counties are Carbon (total signatures 3), Franklin (total signatures 1), Greene (total signatures 3), and Bergen County, New Jersey [sic] (total signatures 1), for a total of 8 unchallenged signatures.

This line-by-line review of individual signatures was both exhaustive and exhausting. Several Judges of this Court worked nonstop, 16 hours a day in order to complete the Supreme Court's mandate within a reasonable timeframe. Our final review indicates that 1,183 pages of nomination papers were filed, containing a total of 51,273[3] signatures submitted by the candidates.

By this Court's Order of August 20, 2004, both sides were directed to be prepared to present their case in the various forums commencing Monday September 27, 2004 and were told that cooperation from both sides was necessary if the review were to be done in anything approaching a timely

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[3] This number differs from the Department of State's tally of 52,398.

manner and that the Court would not tolerate intemperate or obstructionist conduct on the part of either the Candidates or the Objectors. The Candidates, through then counsel Samuel Stretton, Esq., were warned that a review of over 50,000 signatures was an ominous undertaking requiring a great deal of manpower and expense and that the Candidates' pre-hearing cooperation in examining challenged signatures with the Objectors, such that potentially valid and invalid signatures could be stipulated to, would be essential to an efficient and timely review. The Candidates chose to ignore this Court's warning and proceeded to do as little as possible prior to the hearings, in an initial attempt to prevent an accurate tally of the signatures.

The review of signatures in Philadelphia was conducted in three *ad hoc* courtrooms that were made available to the Court by the Philadelphia Voter Registration Division of the Philadelphia City Commissioners. With the assistance of Commonwealth Court's Computer Department, each courtroom contained three computer monitors on which could be displayed voter registration information and scanned copies of voter signatures contained in the voter registration database of the Voter Registration Division. A fourth courtroom was subsequently added. The voter registration data reviewed by the Court was a true and accurate record of voter information contained in the Voter Registration Division's database as attested to by the Commission's Urban Registration Administrator, Robert Lee. A civil service employee of the Voter Registration Division operated a computer terminal in each courtroom. The Objectors provided the Court and the Candidates with three exhibits filed with the petitions to strike: exhibit 1, being a six volume document detailing the

Philadelphia Objections; exhibit 2 set forth the "Global"[4] challenges; and exhibit 3 set forth the forgery challenges. Exhibit 1 was distributed among President Judge Colins, who was initially assigned Volumes A and B, Judge Smith-Ribner, who was initially assigned Volumes C and D, and Senior Judge Mirarchi, who was initially assigned Volumes E and F. Prior to the hearing date of September 27, 2004, at the direction, of this Court, Robert Lee, and members of his staff, prepared a detailed report of each signature challenged and prepared a detailed report setting forth their line-by-line findings regarding the Objectors' challenges to individual signatures. Copies of these reports were supplied to the candidates. The Court takes this opportunity to thank Mr. Lee and his entire staff for their tireless work on this project. Faced with an initial lack of cooperation from the Candidates, he and his staff produced records that were invaluable to this Court in resolving this matter.

When this Court's review began On September 27, 2004, the Candidates, in total disregard of this Court's order of August 20, 2004, were unprepared to respond to the allegations set forth in the Objectors Petition and chose instead to focus on delay and obfuscation. From the very outset of the Philadelphia hearings, the Candidates repeatedly, and without foundation, charged that this Court had improperly shifted the burden of proof from the Objectors to the Candidates, ignoring the fact that, at all times, the burden of proof would rest with the Objectors. Rather than focus on the task at hand, the Candidates raised groundless issues of due process violations and repeatedly challenged the validity

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[4] These "Global" challenges refer to challenges made to all of the signatures contained in one page for a single reason such as a faulty circulator's affidavit.

of our Supreme Court's decisions in *In re Nomination Petition of Silcox*, 674 A.2d 224 (Pa. 1996), and *In re Nomination Petition of Flaherty*, 770 A.2d 327 (Pa. 2001), decisions that had been re-affirmed by our Supreme Court in opinions filed as late as September 29, 2004, two days after these hearings began. In that opinion, *In Re: Nomination Papers of Ralph Nader, et al.*, No. 154 MAP 2004, Madame Justice Newman writing for a majority of the Supreme Court, (unanimous in reaffirming the holding *of Flaherty* and *Silcox),* held that

> The Commonwealth Court identified the correct standards that we have mandated in *Flaherty* and *Silcox,* regarding late registrations and the requirements for review of signatures and addresses. Further, Candidates' due process rights were not violated by the Secretary's rejection of signatures. Candidates' request for application of lesser standards may Well portend their inability to meet the requirements we have established.

Id. at 32.

After three weeks of hearings and the expenditure of nearly a quarter of a million dollars of the taxpayers' money, this Court concludes that the Candidates have submitted only 18,818 valid signatures, and are thus not eligible to have their names placed on the November 2004 ballot as candidates for President and Vice-President. The following procedures were employed to reach this conclusion.

The Candidates challenged the work product and methodology employed by the voter registration offices. Additionally, Candidates challenged the original election petitions, advancing the notion that there was no explanation for "black lines" and "red lines" that allegedly inexplicably

appeared on the original nomination papers. In order to address these concerns, a joint hearing was held before President Judge Colins, Judge Smith-Ribner, and Senior Judge Mirarchi beginning on September 27, 2004.

The Court addressed the issue by placing on the record the procedures employed to maintain the chain of custody of the original nomination papers. The procedures are detailed as follows. The Department of State transported the nomination papers filed by the Candidates to the Harrisburg offices of the Commonwealth Court where the papers were immediately placed into the custody of an armed security officer of Commonwealth Court. That official transported the Philadelphia nomination papers to the office of this Judge. This Judge then caused the nomination papers to be distributed to both Judge Smith-Ribner and Senior Judge Mirarchi. At all times the papers have been in the custody and control of the Court. Having explained that procedure to the Candidates, Candidates continued to proffer the argument that there was no explanation of the black line or red markings on the nomination papers. This Judge then referenced the August 24, 2004 ruling of the Department of State wherein the Department set forth that it reviewed the nomination papers and in instances where a defect was ascertained, the Department marked the signature with an "x" to the left of the line and circled the defect. This Court further noted that such is the Department of State's usual practice in reviewing all nomination petitions and papers it receives. (See Department of State August 24, 2004 filed title "Reply to the Order of the Court.") The Candidate continued to assert that there was no explanation for the black lines on the nomination petitions and sought to question Mr. Lee regarding the procedure employed for uploading information to the City of Philadelphia's voter registration database, and the manner employed to review signatures.

. On direct examination by the Candidate, Mr. Lee testified as to his duties and qualifications as Urban Registration Administrator for the City of Philadelphia. Further, he described the procedures by which voter registration records are received and maintained by the Division. Mr. Lee testified that he oversees the daily operations of the Voter Registration Division including maintaining the accuracy of the voter registration files. That process includes maintaining a file of eligible voters that is used at polling places for determining voter eligibility; a knowledge of and compliance with the National Voter Registration Act of 1993, P.L. 103-21, 42 U.S.C. §§ 1973gg-1--1973gg-10, Pennsylvania Voter Registration Act (PVRA), Act of June 30, 1995, P.L. 170, *as amended,* 25 P.S. §§ 961.101--961.5109; and the Voting Rights Act, Act of June 29, 1982, 42 U.S.C. § 1973aa-6. (Notes of Testimony September 27, 2004, pp. 8-9.) Regarding the technology employed by the Division, Mr. Lee testified that the system used is a CICS operation, with an installed imaging add-on that allows the Division to scan and index the signatures and affidavit images to the data record for each voter in the mainframe. This in turn eliminates paper documents. He further explained that the system is isolated and not on the City of Philadelphia's computer network or any other network. There is no outside access; the system is password protected at various levels. Only specific people in voter registration can access the system for maintenance and data input. (Notes of Testimony, September 27, 2004, pp. 9-12.) Finally, Mr. Lee testified that the system is designed so that once registrations have been entered; access is available to individual records by name, list of voters, and addresses. Mr. Lee testified that when preparing the reports for the Court, he did not use the original nomination papers but rather was working from copies of the nomination papers. The three Judges all found Mr. Lee's testimony 100% credible.

After it became obvious that the nomination papers were rife with forgeries, the campaign attorneys called Mr. Dominic Martino as a fact witness on September 29, 2004. Mr. Martino testified that he is the Campaign Coordinator for Pennsylvania. He testified that by June 2004 the campaign had gathered only 1,500 signatures on the nomination papers. (Notes of Testimony, September 29, 2004, p. 55.) John Sleven proprietor of a professional "ballot access company" was called in to gather the remaining 24,000 signatures. That company prepared and distributed a flyer that stated:

CASH NOW!

$100.00 to $200.00

per day

Petition to allow Ralph Nader on

The November Ballot

* * * *

We pay Daily Cash Advances! Paid by Signature!

See Exhibit marked "Objector-2", 9/29/04, appended hereto.

Mr. Martino further explained that he and John Sleven were both aware that individuals were repeatedly signing the petitions, and that many of the signatures were not authenticated. Further, he testified that he himself, and other campaign workers, in reviewing the petitions prior to filing, "black lined" signatures that were obviously deficient. (See Notes of Testimony, September 29, 2004, pp. 55-60.) These "blacklined" signatures were tabulated by President Judge

Colins as "withdrawn by candidate prior to submission." (This was in direct contravention of Mr. Nader's attorney's previous statements regarding the "blacklined" signatures.)

Based on the testimony presented this Judge makes the following findings.

FINDINGS OF FACT

1. This Judge finds Mr. Lee's testimony credible.

2. This Judge accepts the work papers prepared by Mr. Lee and presented to this Judge at the hearings held September 27, 28, 29, 30, October 1, 4, 5, 7, 8, and 12. The findings made by Mr. Lee were reviewed by this Judge and have been incorporated into the document appended to this opinion and order and labeled findings of President Judge Colins.

3. Further, as to those signatures, found to be a forgery, this Judge's findings are based on the credible testimony of Objectors' handwriting expert Ms. Renee Martin, as well as the Court's physical examination of the nomination papers.

4. This Judge finds the testimony of Mr. Martino credible as it relates to the gathering of signatures, and the "black lining" of signatures by Martino.

5. This Judge finds credible Mr. Martino's testimony that the campaign had knowledge that false signatures were submitted on the nomination papers of Candidates.

6. This Judge personally reviewed every line of those Philadelphia Nomination Papers occurring on Pages 4 to 230

from the whole of the nominating papers filed by the Candidates (referred to as the Volumes A and B pages).

7. This Judge incorporates by reference the findings of fact of Senior Judge Mirarchi as set forth at length as to the duplicate signatures.

8. This Judge incorporates fully the conclusions of Senior Judge Mirarchi regarding the fraud and impropriety involved in the Objector's circulation process.

9. This Judge's findings regarding the striking of individual signatures by page numbers and lines is set forth in the document attached hereto and named President Judge Colins Nader Summary Totals. This Judge merged the category of "forgery" and "signatures signed in the hand of another." (*Silcox* issue). This Judge merged the categories of Data Omitted and Printed Signatures.

10. This Judges findings regarding the striking of signatures, represented in totals, are as follows:

Total Signatures Reviewed	10794
Total Signatures Not Registered	2304
Total Signatures Not Registered at the Address	2100
Total Signatures Not Registered On the Date Signed	714
Total Signatures marked Non-Existent or Out of County	271
Total Signatures Illegible	72

Total Signatures where data omitted	237
Total Signatures deemed forgeries	568
Total Signatures marked duplicates	168
Total Signatures withdrawn by Candidate at hearing	791
Total Signatures Blacklined Prior to Submission by Candidate	291
Total Signatures Stricken	7516
Total Signatures Valid	3278

CONCLUSIONS

1. This Judge reviewed a total of 10,794 signatures.

2. After reviewing the 10,794 signatures this Judge finds that

10,794 Signatures Reviewed

7,516 Signatures Stricken

3,278 Signatures Valid

3. With respect to Mr. Justice Saylor's concurring and dissenting opinion in *In re Nomination Papers of Nader*, ___Pa.___, ___ A.2d ___ (No. 171 MM 2004, filed October 1, 2004), directing that we consider grounds for striking signatures other than the fact that the electors are not registered, we report that the following signatures were stricken only on the grounds that the elector was not

registered (2,304) (however, the Court does not make the corollary finding that all of the electors were subsequently validly registered), not registered at the address at the time of signing (2,100), and was not registered at the time of signing (714). The specific page numbers and line numbers are set forth in the exhibit marked President Judge Colins Nader Summary Totals.

In addition, this Court wishes to commend Basil Culyba, Esquire, admitted *pro hac vice*, who represented candidates commencing October 1, 2004 for showing the highest standards of professionalism and integrity. Mr. Culyba's conduct, legal knowledge, and ethics, as well as those of objectors' attorney, Gregory Harvey, are of the highest caliber ever witnessed by this Judge.

COURT CONSOLIDATED FINDINGS and CONCLUSIONS

1. The President Judge finds that the Candidates and Objectors, particularly in the nomination papers denominated the "Allegheny Petitions" entered various stipulations relating to withdrawn signatures. The President Judge finds that the total number of signatures submitted on the Candidates nomination papers equals 51,273, 1,119 less than the recorded by the Department of State.

2. The President Judge incorporates all findings and conclusions of the Judges of this Court which and sets forth that the totals for all nomination papers are as follows:

Total Signatures Not Registered	7506
Total Signatures Registered After the Date of Signing	1470
Total Signatures Not Registered at the	

Address	6411
Total Signatures Data Omitted	1869
Total Signatures Information Written in the Hand of Another	7851
Total Signatures Printed	8
Total Signatures Illegible	166
Total Signatures Forged	687
Total Signatures Nicknames or Initials	32
Total Signatures Duplicates	1087
Total Signatures Affidavit Problems	1855
Total Signatures Other	3513
Total Signatures Reviewed	**51273**
Total Signatures Stricken	**32455**
Total Signatures Valid	**18818**

3. After reviewing the 51,273 signatures this Court finds that

51,273 Signatures Reviewed

32,455 Signatures Stricken

18,818 Signatures Valid

4. With respect to Mr. Justice Saylor's concurring and dissenting opinion in *In re Nomination Papers of Nader*,

___Pa.___, ___ A.2d ___ (No. 171 MM 2004, filed October 1, 2004), directing that we consider grounds for striking signatures other than the fact that the electors are not registered, we report that the following signatures were stricken solely on the grounds that the elector was not registered at the time of signing (1,470), and that adding this number to the valid signatures would still leave the candidates 5,409 short. The specific page numbers and line numbers are set forth in the exhibit marked President Judge Colins Nader Summary Totals.

CONCLUSION

In conclusion, the President Judge must state that that he has served longer on the Commonwealth Court than any other Judge in the Court's history and, as a result thereof, has reviewed more nomination petitions than any other Judge in the Court's history. I am compelled to emphasize that this signature gathering process was the most deceitful and fraudulent exercise ever perpetrated upon this Court. The conduct of the Candidates, through their representatives (not their attorneys), shocks the conscience of the Court. In reviewing signatures, it became apparent that in addition to signing names such as "Mickey Mouse," "Fred Flintstone," "John Kerry," and the ubiquitous "Ralph Nader," there were thousands of names that were created at random and then randomly assigned either existent or non-existent addresses by the circulators.

A detailed line-by-line breakdown of the pages and lines reviewed and the reasons for disqualification has been prepared by each judge and follows. Accordingly, the Court enters the following

ORDER

AND NOW this 13th day of October 2004 upon consideration of the Petitioner's Petition to set aside the nomination papers of Ralph Nader and Peter Miguel Camejo for the Office of President and Vice-President in the General Election of November 2, 2004 and the hearings related thereto conducted throughout the Commonwealth of Pennsylvania, we find as follows: that the number of signatures required on the nomination papers for the office of President and Vice-President is 25,697 (25 P.S. § 2911). The nomination papers consist of 51,273 signatures. Based on the evidence presented by Petitioner at the hearings, and the parties' various stipulations, the Court concludes that 18,818 valid signatures were submitted; therefore, the nomination papers contained 6,879 signatures less than the required 25,697 signatures. Accordingly, the petition to set aside is **GRANTED**.

Further, the Secretary of the Commonwealth is directed not to certify the names of Ralph Nader and Peter Miguel Camejo as candidates for President and Vice-President of the United States in the November 2, 2004 general election.

/s/_____

JAMES GARDNER COLINS,
President Judge

APPENDIX C

{J-211-2004}
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 182 MAP 2004

[Filed October 19, 2004]

IN RE: NOMINATION PAPER OF RALPH NADER AND PETER MIGUEL CAMEJO AS CANDIDATES OF AN INDEPENDENT POLITICAL BODY FOR PRESIDENT AND VICE PRESIDENT IN THE GENERAL ELECTION OF NOVEMBER 2, 2004	)
LINDA S. SERODY, RODERICK J. SWEETS, RONALD BERGMAN, RICHARD TRINCLISTI, TERRY TRINCLISTI, BERNIE COHEN-SCOTT, DONALD G. BROWN AND JULIA A. O'CONNELL	)
APPEAL OF: RALPH NADER AND PETER MIGUEL CAMEJO, AND THEIR INDEPENDENT ELECTORS	)

Appeal from the Order of the Commonwealth Court
dated October 13, 2004
at No. 568 M.D. 2004

ORDER

PER CURIAM

AND NOW, this 19th day of October, 2004, the Order of the Commonwealth Court dated October 13, 2004, is affirmed. The Application For Supersedeas is denied. The Application For Intervention is dismissed as moot.

Mr. Justice Saylor dissents. Dissenting Statement to Follow.

APPENDIX D

{J-211-2004}
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 182 MAP 2004

[Filed October 22, 2004]

IN RE: NOMINATION PAPER OF RALPH NADER AND PETER MIGUEL CAMEJO AS CANDIDATES OF AN INDEPENDENT POLITICAL BODY FOR PRESIDENT AND VICE PRESIDENT IN THE GENERAL ELECTION OF NOVEMBER 2, 2004	)
LINDA S. SERODY, RODERICK J. SWEETS, RONALD BERGMAN, RICHARD TRINCLISTI, TERRY TRINCLISTI, BERNIE COHEN-SCOTT, DONALD G. BROWN AND JULIA A. O'CONNELL	)
APPEAL OF: RALPH NADER AND PETER MIGUEL CAMEJO, AND THEIR INDEPENDENT ELECTORS	)

Appeal from the Order of the Commonwealth Court
dated October 13, 2004
at No. 568 M.D. 2004

DISSENTING STATEMENT

MR. JUSTICE SAYLOR

On October 19, 2004, a majority of this Court entered a *per curiam* Order affirming the Commonwealth Court's decision to set aside the nomination papers of Ralph Nader and Peter Miguel Camejo, thus removing them as candidates of an independent political body for President and Vice President in the general election of November 2, 2004. I noted my dissent to this Order, consistent with my belief that, in determining that the candidates' nomination papers were defective, the Commonwealth Court misconstrued relevant statutory authority, thereby assessing the candidates' submissions according to a standard that was more stringent than that which has been prescribed by the Pennsylvania General Assembly. Specifically, it is my position that the Commonwealth Court incorrectly construed the term "qualified elector," as used in the Pennsylvania Election Code,[1] to subsume a requirement of actual voter registration. By way of further background, pursuant to this Court's Order dated September 29, 2004, *see In re Nomination Papers of Nader*, ___ Pa. ___, ___ A.2d ___, 2004 WL 2185351 (Sept. 29, 2004), the Commonwealth Court set out to assess whether objectors to the candidates' nomination papers had satisfied their burden to establish that, of the 51,273 signatures presented on the face of the candidates' submissions, at least 25,577 failed to meet requirements of the Election Code, such that the candidates lacked the 25,697 valid signatures necessary to gain ballot access. *See* 25 P.S. § 2911. *See generally Nader*, ___ Pa. at ___ n.1, ___ A.2d at ___ n.1,

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[1] Act of June 3, 1937, P.L. 1333 (as amended, 25 P.S. §§ 2600-3591) (the "Election Code").

2004 WL 2185351, *1 n.1. In devising a protocol for this substantial undertaking, the Commonwealth Court determined, *inter alia*, that the Election Code requires that each signator on a nomination paper seeking ballot access for representatives of independent political bodies must be a registered voter in Pennsylvania. *See In re Nomination Paper of Nader*, No. 568 M.D. 2004 (Pa. Cmwlth. Sept. 20, 2004) (*per curiam* order). In other words, the court implemented a registration standard to guide its signature review. As of the commencement of the review process, the candidates challenged this registration standard on the basis that it was not supported by the Election Code and concurrently sought this Court's review of this challenge under an exercise of its extraordinary jurisdiction.[2] Via *per curiam* Order dated October 1, 2004, this Court declined to invoke its extraordinary jurisdiction, and at such time, I filed a concurring and dissenting statement expressing the view that the candidates' challenge to the registration standard appeared to have substantial merit. *See In re Nomination Papers of Nader*, 171 MM 2004 (Pa. October 1, 2004) (concurring and dissenting statement). Accordingly, I also indicated that I would direct the Commonwealth Court to separately review whether the objectors satisfied their burden with respect to each signature, assuming that voter registration was not required. My aim in this respect was to preserve the opportunity for meaningful appellate review of the objections to the candidates' nomination papers should this Court at such juncture determine that a "qualified elector," as used in the

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[2] There are legitimate issues concerning the timeliness of the candidates' challenge to the Commonwealth Court's implementation of a registration standard in the signature review process, which led the Commonwealth Court to conclude that the challenge had been waived. Accordingly, I have addressed the waiver concern in the discussion below.

Election Code, need not be a registered voter. The signature review process went forward, nevertheless, with the registration standard in place.

The Commonwealth Court derived the registration standard from Section 951 of the Pennsylvania Election Code, which pertains to independent political bodies (as opposed to major political parties), and interposes the central requirement for a valid signature on a nomination paper of status of the signator as a "qualified elector." *See* 25 P.S. § 2911(c).[3] The Election Code, however, defines "qualified elector" with reference to the criteria enumerated in the Pennsylvania Constitution pertaining to factors such as age, citizenship, and residency; the definition does not contain an express requirement of voter registration. In particular, Section 102(t) of the Code states that a "qualified elector" is

> any person who shall possess all of the qualifications for voting now or hereafter prescribed by the Constitution of this Commonwealth, or who, being otherwise qualified by continued residence in his election district, shall obtain such qualifications before the next ensuing election.

25 P.S. § 2602(t). The relevant constitutional provision

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[3] Also at issue in this case are signatures stricken because the circulator of the petition on which they appeared was not registered to vote (circulators, as well as signers, are subject to "qualified elector" status pursuant to Section 951, *see* 25 P.S. § 2911(d)). For ease of discussion, and as the number of signatures stricken based on circulator status is minimal in comparison to those stricken based on the status of the signator, I have confined my discussion to the signator context, while merely noting here that the analysis applies equally to the petition circulators.

specifies that:

> Every citizen 21 years of age [lowered to 18 years of age by the twenty-sixth amendment to the United States Constitution], possessing the following qualifications, shall be entitled to vote at all elections subject, however, to such laws requiring and regulating the registration of electors as the General Assembly may enact.
>
> 1. He or she shall have been a citizen of the United States at least one month.
>
> 2. He or she shall have resided in the State 90 days immediately preceding the election.
>
> 3. He or she shall have resided in the election district where he or she shall offer to vote at least 60 days immediately preceding the election, except that if qualified to vote in an election district prior to removal of residence, he or she may, if a resident of Pennsylvania, vote in the election district from which he or she removed his or her residence within 60 days preceding the election.

PA. CONST. art. VII, § 1 (emphasis added).

Based on Article VII, Section 1's proviso "subject . . . to such laws requiring and regulating the registration of electors as the General Assembly may enact," the Commonwealth Court, and the objectors, have adopted the view that the qualifications enumerated were subject to legislatively-enacted regulations, and hence, a person cannot be a qualified elector unless registered to vote. However, a straightforward reading of the constitutional text reveals that the qualifications in view

are those which are listed within the constitutional provision itself (i.e., in subsections 1, 2 and 3 of Article VII, Section 1), whereas the legislatively-enacted regulations are authorized via the introductory proviso to control the elector's entitlement to vote once the elector possesses the necessary qualifications to exercise the franchise.

Section 701 of the Election Code, which codifies virtually word-for-word the constitutional recitation of the qualifications of an elector, confirms this view:

> **§ 2811. Qualifications of electors**
>
> Every citizen of this Commonwealth eighteen years of age, possessing the following qualifications, shall be entitled to vote at all elections, providing he or she has complied with the provisions of the acts requiring and regulating the registration of electors:
>
> (1) He or she shall have been a citizen of the United States at least one month.
>
> (2) He or she shall have resided in the State ninety days immediately preceding the election.
>
> (3) He or she shall have resided in the election district where he or she shall offer to vote at least thirty days immediately preceding the election, except that if qualified to vote in an election district prior to removal of residence, he or she may, if a resident of Pennsylvania, vote in the election district from which he or she removed his or her residence within thirty days preceding the election.

25 P.S. § 2811. Like Article VII, Section 1 of the

Constitution, this provision dictates that voting "qualifications" pertain to age, citizenship, and residency, whereas, ultimately, entitlement to vote is contingent upon compliance with voter-registration requirements extrinsic to Section 701. Indeed, Section 701 is, if anything, even more explicit in this regard than the constitutional text on which it is based, as it clarifies that compliance with registration requirements is only relevant to the entitlement aspect, and does not pertain to voter "qualifications."

This distinction between a qualified elector and a registered voter is recognized elsewhere in the Election Code as well. For example, the Code specifies that any "qualified elector" in the military may vote in primary elections "regardless of whether he is registered or enrolled," but that a military spouse or dependent who is a "qualified elector" may only vote if he or she is also "registered or enrolled according to law." 25 P.S. § 3146.1(a, b). This demonstrates that the General Assembly contemplated that some qualified electors would not be registered to vote. Conversely, the Election Code recognizes that some individuals who are in fact registered to vote -- and are thus "registered electors" -- may not be qualified electors because they lack the inherent qualifications to vote. *See* 25 P.S. § 3523. This again demonstrates that the General Assembly assumed that there was a distinction between qualification to vote and registration to vote.[4]

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[4] Also supporting this interpretation, the Election Code designates certain functions as available only to "qualified registered electors," or simply, "registered electors." *See, e.g.*, 25 P.S. §§ 2625 (members of State Plan Advisory Board must be "registered electors"), 2642 (Secretary of State must publicly report the number of "registered electors" in each party), 2672 (election officers must be "qualified registered electors" of the district in

which they are appointed), 2674 (voting machine inspectors must be "qualified registered electors" of the county), 2675 (election board vacancies must be filled by "qualified registered electors" of the county), 2685 (five "registered electors" must sign any petition requesting overseers), 2687 (poll watchers must be "qualified registered electors" of the county), 2702 (newly formed election districts must contain between 100 and 1,200 "registered electors"), 2703 (twenty "registered electors" are needed on a petition to divide or alter an election district), 2726 (ten "qualified registered electors" are needed on a petition to alter an election district's polling place), 2730 (setting the minimum number of voting booths based upon the number of "qualified registered electors" in the voting district), 2967 (one book of 50 ballots must be provided for every 45 "registered electors" in an election district), 3031.2 (by majority vote of its "qualified registered electors," a municipality may institute electronic voting at primaries throughout the municipality), 3103.5 (ten "qualified registered electors" are needed to request reexamination of a previously-approved electronic voting system), 3056 ("registered electors" may demonstrate how to vote), 3146.2 (some absentee ballot applications may be from "qualified electors," while others must be from "qualified registered electors"), 3146.6 (affidavit of absentee voter who is later able to vote in person must declare that he or she is a "qualified registered elector"); 3160 (election returns for certain municipal elections must be certified to the county where the majority of "registered electors" of the municipality reside); 3313 (100 "registered electors" are required for an election contest petition to be laid before the General Assembly); 3377 (50 "registered electors" are required to complain of an illegal primary or judicial election or false election return); 3402 (20 "registered electors" are required to complain of an illegal election for representative in Congress or either house of the state legislature or false election return). The use of the phrase "qualified registered electors" would constitute surplusage if, as the objectors argue, the General Assembly intended the separate term "qualified elector" to have an identical meaning.

Furthermore, in *In re Sullivan*, 307 Pa. 221, 160 A. 853 (1932), this Court recognized the distinction between "qualification" to vote and "entitlement" to vote when interpreting substantively similar -- and structurally identical -- language in a prior version of the Pennsylvania Constitution.[5] In that matter, the trial court had granted an objector's request to set aside a nominating petition on the

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[5] The constitutional provision interpreted in *Sullivan* stated as follows:

> Every male citizen twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections, subject however to such laws requiring and regulating the registration of electors as the General Assembly may enact:
>
> 1. He shall have been a citizen of the United States at least one month.
>
> 2. He shall have resided in the State one year (or, having previously been a qualified elector or native born citizen of the State, he shall have removed therefrom and returned, then six months), immediately preceding the election.
>
> 3. He shall have resided in the election district where he shall offer to vote at least two months immediately preceding the election.
>
> 4. If twenty-two years of age and upwards, he shall have paid within two years a State or county tax, which shall have been assessed at least two months and paid at least one month before the election.

PA. CONST. of 1874, art. VIII, § 1. *See Sullivan*, 307 Pa. at 224, 160 A. at 853.

basis that a certain number of the signatures on the petition were from persons who were otherwise qualified to vote, but who were not registered. This Court reversed, explaining:

> We cannot agree . . . that registration is an essential qualification of an elector. The reference which is made to registration in the first paragraph of the section of the Constitution just quoted [i.e., the former Article 8, Section 1, see supra note 5] does not require such a narrow construction of the phrase "qualified elector." Registration may be and usually is prerequisite to voting; but it is not a qualification for the exercise of the franchise. No attorney is permitted to argue before the bar of this court without being formally admitted; yet no one would contend that the mere motion for admission constitutes a qualification for practice. The same reasoning applies to registration for voting.

Id. at 224-25, 160 A. at 854.[6]

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[6] Other jurisdictions have reached similar holdings. *See, e.g., City of Madison v. Wade*, 16 S.E. 21 (Ga. 1892) (holding that registration adds no qualifications to voters, but only serves to identify them as persons qualified to vote); *Wilson v. Bartlett*, 62 P. 416, 417 (Idaho 1900) (finding that registration is not a substantive qualification of an elector); *People v. Hoffman*, 5 N.E. 596, 608 (Ill. 1886) (noting that the state constitution recites the qualifications for voters, whereas the registry statute is merely a means of ascertaining whether an individual possesses such qualifications); *Cave v. Conrad*, 24 N.E.2d 1010, 1011 (Ind. 1940); *Piuser v. Sioux City*, 262 N.W. 551, 554 (Iowa 1935) ("We think it is generally recognized that . . . registration is a regulation of the exercise of the right of suffrage and not a qualification for such right." (citation and internal quotation marks omitted)); *State v. Butts*, 2 P. 618, 621 (Kan. 1884); *Eastwood v. Donovan*, 105

This conclusion follows naturally from recognition that, historically, the concept of qualification to vote was a matter that preceded the advent of voter registries; such registries were put in place, through legislation, to provide *prima facie* evidence that the voter retained such qualifications. *See In re Contested Election of McDonough*, 105 Pa. 488 (1884). The aim was apparently to avoid subjecting verification of voter qualifications to the pressure of election day, *see generally State v. Butts*, 2 P. 618, 619 (Kan. 1884), and to provide a check on duplicate voting, *see generally Eastwood v. Donovan*, 105 N.W.2d 686, 688 (Minn. 1960).[7] These

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N.W.2d 686, 688 (Minn. 1960) ("Registration does not affect the qualification of a citizen to vote but is simply a legislative requirement enacted to further the orderly conduct of an election . . . If the legislature had intended to make registration a necessary qualification for signing a nominating petition, it could easily have said so."); *State v. Weaver*, 122 S.W. 465, 465 (Tenn. 1909) ("The registration laws of the state do not prescribe qualifications of electors, but were enacted for the purpose of regulating the exercise of the elective franchise . . .."); *State ex rel. Keefe v. McInerney*, 182 P.2d 28, 31 (Wyo. 1947) (observing that most courts "take the view that it is not necessary that a petition similar to that involved in this case be signed by people who are registered, and that it is sufficient if it is signed by people otherwise qualified as electors"). *But see Hunt v. Superior Court*, 170 P.2d 293, 295 (Ariz. 1946).

[7] The court in *Butts*, per then-Judge Brewer (later Justice Brewer of the United States Supreme Court), adds the following historical information concerning the manner in which qualifications were ascertained prior to the advent of registries:

> [T]he uniform practice was to keep a list of those who voted. It was also the privilege of every citizen to challenge the vote of any one offering to vote whose right to vote he

specific concerns are absent, however, relative to individuals who sign nominating petitions well in advance of election day. In the latter context, a significant governmental objective is to provide a reasonable means by which prospective candidates unconnected with the major parties may have an influence on the democratic process, while at the same time ensuring that only persons satisfying the requisite age, citizenship, and residency requirements participate in placing such a candidate on the ballot. This interest is sufficiently served by requiring signers and circulators of nominating papers to be qualified electors, even if they are not registered to vote. Notably, as well, and in contrast, for major political parties both the signer and the affiant must be registered and enrolled electors of the political party designated in the petition, in addition to

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> suspected, and the party challenged was called upon to prove, by his own oath or otherwise, his possession of the qualifications of an elector. So that when the framers of the constitution introduced [Article V, Section 4 of the Kansas Constitution,] something more was intended than the mere preservation of a poll-list on the day of election and the ascertaining of the qualification of the voters by challenges on that day. Obviously, what was contemplated was the ascertaining beforehand by proper proof of the persons who should, on the day of election, be entitled to vote . . .. Requiring a party to be registered is not in any true sense imposing an additional qualification any more than requiring a voter to go to a specific place for the purpose of voting, or requiring him to prove, by his own oath or the oaths of other parties, his right to vote when challenged, or than requiring a naturalized foreigner to present his naturalization papers. Each and all of these are simply matters of proof--steps to be taken in order to ascertain who [are] and who are not entitled to vote.

Butts, 2 P. at 621.

having qualified elector status, *see* 25 P.S. §§ 2868, 2869; the prerequisite that the individual be registered as a party member in this context prevents those outside the party from interfering in intra-party affairs. Section 951 of the Election Code, however, pertaining to independent political bodies, contains no analog to this requirement, thus also supporting the position that the requirement simply does not exist for signers and affiants relative to nomination papers for an independent political body.[8]

The recently-enacted Voter Registration Law,[9] which governs voter registration and voting procedure, also confirms this view. That statute separately defines the terms "qualified elector" and "registered elector"; specifically, it defines a "registered elector" as a "qualified elector who is registered to vote." 25 Pa.C.S. § 1102. Likewise, Section 1107 of the

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[8] Certainly a state has a legitimate interest in confining third party candidacies, within constitutional limitations, so as not to permit them to unduly distort or skew the election process. *See, e.g., Anderson v. Celebrezze*, 460 U.S. 780, 788 n.9, 103 S. Ct. 1564, 1570 n.9 (1983) ("The state has the undoubted right to require candidates to make a preliminary showing of substantial support in order to qualify for a place on the ballot, because it is both wasteful and confusing to encumber the ballot with the names of frivolous candidates."); *Storer v. Brown*, 415 U.S. 724, 736, 94 S. Ct. 1274, 1282 (1974) (noting that the Founders believed "that splintered parties and unrestrained factionalism may do significant damage to the fabric of government"). The question presented here, however, relates to the correct interpretation of the method that the Pennsylvania Legislature has chosen to regulate the election process, and not the availability of more restrictive measures, consistent with constitutional precepts.

[9] Act of January 31, 2002, P.L. 18, No. 3, § 1 (as amended, 25 Pa.C.S. §§ 1101-3302).

Voter Registration Law specifies that all electors who are registered to vote on the law's effective date, and who remain "qualified," shall continue to be registered. *See* 25 Pa.C.S. § 1107. This provision would make little sense if the Legislature understood the term "qualified" to include a requirement of being registered.[10]

Because this Court has never expressly interpreted the phrase "qualified elector" for purposes of Section 951 of the Election Code, the Commonwealth Court relied for its disposition on this issue upon a 1939 case in which this Court construed the term "elector," as used in the Liquor Control Act and the Beverage Licensing Law, to signify a registered voter. *See* Commonwealth Court Memorandum Opinion of September 27, 2004, at 4 (citing *Aukamp v. Diehm*, 336 Pa. 118, 121, 8 A.2d 400, 401 (Pa. 1939)). Objectors presently agree with the Commonwealth Court's analysis in this regard, and argue that principles of *stare decisis* dictate that this Court is not at liberty to construe the term "qualified elector" as used in Section 951 of the Election Code in any other fashion. As the *Aukamp* decision interpreted liquor and beverage regulations, however, whereas *Sullivan* pertained to the legislation governing ballot access for prospective candidates, *Sullivan* represents the more relevant precedent here. Notably, *Aukamp* does not cite or overrule *Sullivan*, or demonstrate any defect in that decision's rationale.

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[10] The distinction between a "qualified elector" and a "registered elector" has been recognized by at least one federal court in Pennsylvania. *See Morrill v. Weaver*, 224 F. Supp. 2d 882, 896-97 & n.16 (E.D. Pa. 2002) (predicting that this Court will construe the term "qualified elector" as used in Section 951 to exclude a registration requirement, and finding that inclusion of such a requirement as to petition circulators would render the statute unconstitutional).

Nevertheless, I do acknowledge that, as concerns their substance, the two decisions are in tension. The reason is that, in reaching its conclusion, *Aukamp* cited to the same constitutional provision as *Sullivan* -- namely, Section 1 of Article VIII of the Constitution of 1874 -- and directly contradicted *Sullivan*'s interpretation of that provision by stating that the laws regarding voter registration modify an elector's constitutional "qualification" to vote. *See id.* As between the two decisions, however, *Sullivan* is, in my view, the better reasoned. In particular, the *Sullivan* Court closely analyzed the constitutional text, including its grammatical structure, and supported its position by drawing an apt analogy to the practice of law, as quoted above. *Aukamp*'s analysis, by contrast, is superficial, as it merely states in a conclusory manner that the Constitution "prescribes as a qualification" that the elector must be registered, and opines that any other interpretation might result in a referendum for the grant of a liquor license on the demand of persons not qualified to vote.[11] In such circumstances, and particularly as

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[11] The objectors forward a similar argument, contending that an interpretation of "qualified elector" which does not presuppose status as a registered voter would make it difficult for them to carry their burden of proving signature invalidity. The candidates disagree, and list other public databases besides voter registration rolls (e.g., driver's license and tax records) through which they claim it would be possible to determine qualified elector status. In this regard, I would simply observe that it is not the courts' function to facilitate objections to ballot access; rather, we are charged with fairly implementing legislative intent according to the framework chosen by the Legislature. In my view, the hurdles to objections arising from the General Assembly's having chosen qualified elector status as opposed to registration as the litmus for nomination papers for independent political bodies are simply consequent to the legislative design and attendant policy choices.

Sullivan is much closer in context to the present scenario, it is my position, again, that it should have been followed here.[12]

At this juncture, I note that the Commonwealth Court attempted to address the concerns raised here (as well as in my prior concurring and dissenting statement) in conjunction with its most recent order precluding ballot access. In this regard, the Commonwealth Court suggested that, even if the registration standard had not been interposed, only 1,470 of the signatures presented by the candidates would need to be re-validated. *See In re Nomination Paper of Nader*, 568 M.D. 2004 (Pa. Cmwlth. Oct. 13, 2004) (consolidated findings, opinion, and order), at 13. For reasons that are unclear from its opinion, however, the Commonwealth Court counted only the 1,470 signatures stricken because the signer had registered to vote after signing the petition, but failed to include a separate grouping of 7,506 signatures which were invalidated solely due to the lack of registration. Since the signatures in this latter category also were not stricken for any reason independent of non-registration, *see id.* at 12, it is evident that they would also have to be counted to assess the sufficiency of the nomination papers in the absence of a registration standard. Accordingly, and because the candidates' deficiency was less than 7,000 signatures under the Commonwealth

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[12] It is also worth observing that the Voter Registration Law -- which, as noted, makes an express distinction between a qualified elector and a registered elector -- did not exist when *Aukamp* was decided. That law specifies that nothing in the Election Code may be deemed inconsistent with it. *See* 25 Pa.C.S. § 1106(c). An interpretation of the Election Code under which the term "qualified elector" means "registered elector" would arguably be inconsistent with the Voter Registration Law, and thereby contravene legislative intent.

Court's reasoning (as 18,818 signatures had been expressly found valid), the elimination of the registration standard would plainly result in a number greater than the 25,697 needed for ballot access.[13]

Finally, and as previously noted, I acknowledge that the question of waiver is of substantial concern in this case, as the candidates did not present their challenge to the registration standard in response to threshold efforts on the part of the Commonwealth Court to solicit omnibus pre-hearing evidentiary objections. Further, I recognize that at least one of the candidates' arguments made in the pre-hearing setting appears to have assumed the validity of a registration standard. Indeed, the candidates' latter argument gave rise to a statement by a majority of this Court in its September 29,

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[13] In the consolidated findings, opinion and order, the Commonwealth Court also indicated that the signatures under review were primarily the result of widespread, systemic fraudulent conduct on the part the individuals gathering them. *See id.* at 13-14 (stating that "this signature gathering process was the most deceitful and fraudulent exercise ever perpetrated upon this Court"). A review of the tables and exhibits attached to the order, however, suggest that the problem was of a more limited scale (for example, 687 signatures out of 51,273 reviewed -- or approximately 1.3% of the signatures -- were rejected on the basis of having been forged). Moreover, the Commonwealth Court cited no evidence that the candidates were specifically aware of fraud or misrepresentation at the time of their submissions, and the candidates note -- and the objectors do not dispute -- that when they became aware of any fraudulent conduct connected with specific signatures, they voluntarily withdrew those signatures from consideration. Finally, the Commonwealth Court's disposition is expressly predicated on a tallying of signatures as to which the objectors were unable to meet their burden of proof (*i.e.*, valid signatures), which is also the subject of my assessment here.

2004, opinion to the effect that registration was indeed a prerequisite to qualified elector status. *See Nader*, ___ Pa. at ___, ___ A.2d at ___, 2004 WL 2185351, *12.[14]

While in such circumstances, the position that the candidates waived the legal argument against a registration requirement carries substantial weight, there are several competing considerations. First, candidates for political bodies bear a representative relationship to the body of qualified electors that nominate them; indeed, here, several individual signers who anticipated that their signatures would be stricken sought to intervene in the process and raise the same argument pertaining to the correct construction of the term "qualified elector." In such circumstances, strict application of waiver principles, particularly as concerns implementation of the controlling law guiding resolution of an election controversy, would seem to me to be unduly harsh and in tension with legislative policies favoring ballot access. In the latter regard, by virtue of their timely filing and appropriate certifications, the candidates enjoyed the benefit of having presumptively valid nomination papers, subject only to challenges by objectors who bore the burden of proof with respect to invalidity. It is therefore troubling to me that such presumption should be disturbed, and disenfranchisement should occur, on grounds other than a definitive determination that controlling law was properly applied in reviewing the objections, particularly when a challenge to the legal standard

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[14] I do not regard this statement on the part of a majority of this Court as controlling here, because the Commonwealth Court's registration standard was not squarely before the Court at that juncture, and therefore, the statement represents *dictum*. Moreover, there was no express consideration of the statutory and constitutional text, nor the relevant authorities in connection with the statement.

in question was in fact raised by the time that the signature review process had commenced and was capable of being addressed on the merits by the Commonwealth Court within a short time thereafter.[15] In this regard, I would note that the origins of the doctrine of waiver are rooted in prudential concerns, and it is questionable whether that doctrine is appropriately applied to support the application of a signature review standard at odds with legislative intent.

In summary, I agree with the candidates that the term "qualified elector," for purposes of Section 951 of the Election Code, does not subsume a voter registration requirement, and that the candidates therefore retained at least 25,697 signatures that have not been stricken by the Commonwealth Court on appropriate grounds. Accordingly, I would have vacated the present order of the Commonwealth Court, thus restoring the candidates to their position on the ballot in accordance with the presumption of validity that controls in the absence of a deficiency in the candidates' nomination papers determined according to a correct application of the prevailing statutory criteria.

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[15] The candidates presented their challenge to the registration standard to the Commonwealth Court on September 27, 2004, and the Commonwealth Court addressed it on waiver grounds and also on the merits via *per curiam* opinion dated September 29, 2004.

APPENDIX E

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 568 M.D. 2004

[Filed October 14, 2004]

In Re: Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004	)
Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti, Terry Trinclisti, Bernie Cohen-Scott, Donald G. Brown and Julia A. O'Connell, Petitioners	)

ORDER

Now, October 14, 2004, except as otherwise ordered, all costs for court stenographer appearances and transcript preparation are hereby assessed against the Nader/Camejo campaign, Ralph Nader and Peter Miguel Camejo individually. The Chief Clerk is directed to forward any future invoices filed with the court by any court stenographer involved in the hearings in the above captioned matter to the

Nader/Camejo campaign and Ralph Nader and Peter Miguel Camejo for payment.

/s/_____

P.J.

APPENDIX F

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 568 M.D. 2004

[Filed January 4, 2005]

In Re: Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004	)
Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti, Terry Trinclisti, Bernie Cohen-Scott, Donald G. Brown and Julia A. O'Connell, Petitioners	)

ORDER

AND NOW, this 14th day of January 2005, the Court having given consideration to Petitioners' Bill of Costs and the response filed in opposition thereto, said Bill of Costs is approved and respondents are directed to pay $81,102.19 to Petitioners.

/s/
JAMES GARDNER COLINS, President Judge

APPENDIX G

STATUTORY PROVISIONS INVOLVED

Section 2937 of the Pennsylvania Election Code is entitled "Objections to nomination petitions and papers." The provision states:

> All nomination petitions and papers received and filed within the periods limited by this act shall be deemed to be valid, unless, within seven days after the last day for filing said nomination petition or paper, a petition is presented to the court specifically setting forth the objections thereto, and praying that the said petition or paper be set aside. A copy of said petition shall, within said period, be served on the officer or board with whom said nomination petition or paper was filed. Upon the presentation of such a petition, the court shall make an order fixing a time for hearing which shall not be later than ten days after the last day for filing said nomination petition or paper, and specifying the time and manner of notice that shall be given to the candidate or candidates named in the nomination petition or paper sought to be set aside. On the day fixed for said hearing, the court shall proceed without delay to hear said objections, and shall give such hearing precedence over other business before it, and shall finally determine said matter not later than fifteen (15) days after the last day for filing said nomination petitions or papers. If the court shall find that said nomination petition or paper is defective under the provisions of section 976, or does not

> contain a sufficient number of genuine signatures of electors entitled to sign the same under the provisions of this act, or was not filed by persons entitled to file the same, it shall be set aside. If the objections relate to material errors or defects apparent on the face of the nomination petition or paper, the court, after hearing, may, in its discretion, permit amendments within such time and upon such terms as to payment of costs, as the said court may specify. In case any such petition is dismissed, the court shall make such order as to the payment of the costs of the proceedings, including witness fees, as it shall deem just. 25 P.S. § 2937 (2005).

Section 3502.1 of the Pennsylvania Election Code states:

> Any candidate for State, county, city, borough, incorporated town, township or school district office or for the office of United States Senator or Representative in Congress or any other elective public office who knowingly makes a false statement regarding his eligibility or qualifications for such office in his candidate's affidavit shall, in litigation which results in the removal of the candidate from the ballot, be liable for court costs, including filing fees, attorney fees, investigation fees and similar costs, in an amount up to ten thousand ($10,000) dollars." 25 P.S. § 3502.1 (2005).